135-554

No brief for D.C.

136-653.

(4)

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. ~~191~~ 21

THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED NOVEMBER 7, 1885.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 194.

THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Original declaration	1	1
Appearance for defendant	6	4
Pleas	6	4
Joinder in issue and demurrer	7	4
Order certifying case to general term	7	5
Judgment of general term sustaining demurrer and remanding to special term	8	5
Amended declaration	8	5
Pleas	15	10
Joinder in issue and demurrer	21	13
Order sustaining demurrer, &c.	21	14
Hearing	22	14
Verdict and judgment	23	14
Motions for new trial	23	15
Stipulation as to bill of exceptions	25	15
Order allowing bill of exceptions *nunc pro tunc*	26	16
Bond on appeal to general term	27	16
Bill of exceptions	28	17
Plaintiff's case	28	17
Extracts from charter of W. & G. R. R. Co.	28	17
Act to pave 7th street southwest from B to Water street southwest	31	19

JUDD & DETWEILER, PRINTERS, WASHINGTON, JULY 12, 1888.

	Original.	Print.
Act to pave 14th street west from H street north to Boundary	32	19
Testimony of Wm. O. Roome	34	21
Entries in journal of Board of Public Works	38	23
Letters from letter-book of Board of Public Works	40	25
Defendant's case	48	31
Testimony of A. B. Mullett (cross)	49	31
Lewis Clephane (cross)	50	32
Plaintiff's requests for instructions	51	33
Defendant's requests for instructions	54	34
Instructions to the jury	61	38
Exhibit A—Charter of W. & G. R. R. Co.	64	40
B—Act making appropriations for improvements and repairs in the District of Columbia, &c., July 10, 1871	70	45
Comprehensive plan submitted to the Council of the District of Columbia, June 20, 1871	73	47
Estimated cost of proposed improvements	78	51
Letter of W. D. Cassin to A. R. Shepherd, June 1, 1871	93	66
C—Schedule of contracts	94	67
D—Form of award	95	67
E—Form of contract and bond	95	67
F—Form of certificate	102	72
Judgment of general term	103	73
Bond	104	73
Writ of error	105	74
Citation	105	74
Clerk's certificate	106	75

1 *Declaration. Filed November* 27, 1880. *R. J. Meigs, Clerk.*

Supreme Court of the District of Columbia.

THE DISTRICT OF COLUMBIA
vs.
THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY. } At Law. No. 22457.

The plaintiff, a body corporate under the laws of Congress, sues the defendant, also incorporated by an act of Congress, for the sum of twenty thousand and forty-nine dollars and sixty-six cents ($20,049.66).

The plaintiff says that by virtue of the act of Congress of February 21, 1871, entitled "An act to provide a government for the District of Columbia;" the act of June 20, 1874, entitled "An act for the government of the District of Columbia, and for other purposes," and the act of June 11, 1878, entitled "An act providing a permanent form of government for the District of Columbia," it was made the duty of the plaintiff to take charge of and improve, as might be prescribed by law, all the avenues, streets, and alleys of the cities of Washington and Georgetown, in said District, for which said purpose the plaintiff was invested with ample powers and privileges, which said acts of Congress are to the court here shown.

2 And the plaintiff further says that the defendant was incorporated by the act of Congress of May 17th, 1862, which it accepted, — organized, and under which it continues and exercises corporate powers, which said act is to the court here shown.

That by the provisions of its said charter it was authorized to construct a street railroad from Bridge street, at its intersection with High street, in the city of Georgetown, in said District, to the Navy Yard gate, at the termination of Eighth street east, in the city of Washington, in said District; also a lateral road running along the eastern front of the Capitol, from the southern to the northern gate, and thence by "A" street to the depot of the Baltimore and Ohio railroad; also a double single-track branch railway from Boundary street north and Seventh street west, and running down said Seventh street west to the Potomac river; also a railway from Boundary street north and Fourteenth street west, running down said Fourteenth street west to New York avenue, and thence by said New York avenue to Pennsylvania avenue, in said city of Washington, for which purpose it might enter upon certain streets and avenues of said cities, among which were the following:

Bridge street, in the said city of Georgetown, and B street south, C street northeast, New Jersey avenue northwest, Seventh street west, and Fourteenth street west, in said city of Washington, and that afterwards it did enter upon, lay down, and construct its tracks along and upon said streets and avenues, crossing the intersecting streets and avenues, and still continues to retain and work its tracks along and upon said streets and avenues.

The fourth section of the charter of said company provides as follows:

"That the said corporation hereby created shall be bound to keep said tracks, and for the space of two (2) feet beyond the outer
3 rail thereof, and also the space between the tracks, at all times well paved and in good order, without expense to the United States or to the cities of Georgetown and Washington."

Which said provision remains in full force, save as it has been modified by subsequent legislation.

That afterwards, in the due exercise of the powers conferred upon the plaintiff, and pursuant to law, it ordered and directed that said streets and avenues should be repaired and improved as follows, amending the grades and laying down new and greatly needed pavements, to wit:

On said Bridge street, wood pavement; on said B street south, at its intersection with New Jersey avenue, wood pavement; on said B street south, between New Jersey avenue and First street west, asphalt pavement; on said C street northeast, wood pavement; on said New Jersey avenue north, wood pavement; on said Seventh street north, wood pavement; on said Fourteenth street north, concrete pavement; of which the defendant had notice.

And thereupon it became and was the duty of said defendant, pursuant to said fourth section of its said charter, to conform its tracks to said grade and pave the entire space between two (2) lines running parallel with its tracks two (2) feet from and outside of its exterior rails, upon and along each and all of said streets and avenues so occupied by it in conformity with the plan prescribed by the plaintiff, which said duty and obligation said railroad company neglected to do, and did not do; and thereupon the plaintiff, in execution of its orders and plans, and to complete the repairs and improvements of said streets and avenues, was obliged to and did grade and pave said portions of said streets and avenues, which as aforesaid should have been graded and paved by said railroad company, to wit:

On said Bridge street, nine hundred and eighty-eight and eighty-nine hundredths ($988\frac{89}{100}$) square yards of wood pavement,
4 at three dollars and fifty cents ($3.50) per square yard, amounting to the sum of three thousand four hundred and sixty-one dollars and eleven cents ($3,461.11), said repair and improvement of said street being complete and finished by the plaintiff, to wit, December 5th, 1872. On said B street south, at its intersection with New Jersey avenue, seventy-one and eleven hundredths ($71\frac{11}{100}$) square yards of wood pavement, at three dollars and fifty cents ($3.50) per square yard, amounting to the sum of two hundred and forty-eight dollars and eighty-nine cents ($248.89), said repair and improvement of said street being complete and finished by the plaintiff, to wit, November 24th, 1873. On said B street south, between New Jersey avenue and First street west, five hundred and twenty-five and sixty-three hundredths ($525\frac{63}{100}$) square yards of asphalt pavement, at three dollars and twenty cents ($3.20) per square yard, amounting to the sum of one thousand six hundred

and eighty-two dollars and two cents ($1,682.02), said repair and improvement of said street being complete and finished by the plaintiff, to wit, November 24th, 1873. On said C street northeast, eight hundred and twenty (820) square yards of wood pavement, at three dollars and twenty cents ($3.20) per square yard, amounting to the sum of two thousand six hundred and twenty-four dollars ($2,624), said repair and improvement of said street being complete and finished by the plaintiff, to wit, December 10th, 1873. On said New Jersey avenue northwest, one hundred and eighty-eight and thirty-three hundredths ($188\frac{33}{100}$) square yards of wood pavement, at three dollars and thirty cents ($3.30) per square yard, amounting to the sum of six hundred and twenty-one dollars and forty-nine cents ($621.49), said repair and improvement of said avenue being complete and finished by the plaintiff, to wit, December 10th, 1873. On said Seventh street northwest, two thousand nine hundred and fifty-three and eighteen hundredths ($2,953\frac{18}{100}$) square yards of wood pavement, at three dollars and thirty cents ($3.30) per square yard, amounting to the sum of nine thousand seven hundred and forty-five dollars and forty-nine cents ($9,745.49), said repair and improvement of said street being complete and finished by the plaintiff, to wit, on said Seventh street west, between B and D streets north, November 11th, 1872; on said Seventh street west, between D and E streets north, October 30th, 1873; on said Seventh street west, between E and G streets north, November 3d, 1873; on said Seventh street west, between G and M streets north, October 30th, 1873; on said Seventh street west, between M and Q streets north, January 6th, 1874; on said Fourteenth street west, five hundred and fifty-five and fifty-five hundredths ($555\frac{55}{100}$) square yards of concrete pavement, at three dollars ($3) per square yard, amounting to the sum of one thousand six hundred and sixty-six dollars and sixty-six cents ($1,666.66), said repair and improvement of said street being complete and finished by the plaintiff, to wit, January 15th, 1874.

And the plaintiff claims as due it, in all, the sum of twenty thousand and forty-nine dollars and sixty-six cents ($20,049.66), which said account for work and material has been duly presented to the defendant and payment thereof refused; whereby an action has accrued to the plaintiff to maintain its said action against the defendant and recover said sum of twenty thousand and forty-nine dollars and sixty-six cents ($20,049.66), for which it asks judgment.

A. G. RIDDLE,
Attorney for Plaintiff.

The defendant is to plead hereto on or before the first special term of the court, occurring twenty days after service hereof; otherwise, judgment.

A. G. RIDDLE,
Attorney for Plaintiff.

6 *Filed Dec.* 1, 1880. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THE DISTRICT OF COLUMBIA
vs.
THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY. } At Law. No. 22457.

The clerk will enter my appearance for the defendant.

ENOCH TOTTEN.

Pleas. Filed Dec. 1, 1880. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THE DISTRICT OF COLUMBIA
vs.
THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY. } At Law. No. 22457.

And now comes the defendant and for plea says that it never was indebted to the plaintiff in manner and form as the plaintiff hath declared against it.

And for further plea the defendant says that all of the causes of action in said declaration mentioned accrued more than three years before the commencement of said suit.

ENOCH TOTTEN,
For W. & G. R. R. Co.

7 *Filed March* 24, 1881. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THE DISTRICT OF COLUMBIA
vs.
THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY. } At Law. No. 22457.

The plaintiff joins issue upon the defendant's first plea.

And to the second plea of defendant the plaintiff demurs, and says that the same is bad in substance.

A. G. RIDDLE,
Att'y for Plaintiff.

NOTE.—Among the matters of law to be argued in support of said demurrer is the following:

That the nature of the case is such that the statute of limitations as plead does not apply.

(17 Min. C. C., p. 49.)

SATURDAY, *March* 26, 1881.

MacArthur, justice.

THE DISTRICT OF COLUMBIA, Pl'ff,
vs.
THE WASHINGTON AND GEORGETOWN R. R. Co., Def't. } At Law. No. 22457.

At the request of the parties, by their respective attorneys, the court orders this case to be heard on the plaintiff's demurrer to the defendant's plea of the statute of limitations in the general term in the first instance.

8 (4 Min. G. T., p. 207.)

MONDAY, *Jan'y* 9, 1882.

Chief Justice Cartter and Justices Hagner and James.

THE DISTRICT OF COLUMBIA
vs.
THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY. } At Law. No. 22457. Cal. 70.

And now again come here the parties, by their attorneys, and thereupon, because it appears to the court here that the defendant's second plea above pleaded is bad in substance, therefore it is considered that the plaintiff's demurrer thereto be, and the same is hereby, sustained; and the court remands the case to the special term for further proceedings therein.

Amended Declaration. Filed Jan. 27, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THE DISTRICT OF COLUMBIA
vs.
THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY. } At Law. No. 22457.

The plaintiff, a body corporate under the laws of Congress, sues the defendant, also incorporated by an act of Congress, for the sum of fifty-six thousand four hundred and twenty-six dollars and thirty-eight cents ($56,426.38).

The plaintiff says that by virtue of the act of Congress of February 21st, 1871, entitled "An act to provide a government for the District of Columbia;" the act of Congress of June 20th, 1874, entitled "An act for the government of the District of Columbia, and for other purposes," and the act of Congress of June 11th, 1878, entitled "An act providing a permanent form of government for the District of Columbia," it was made the duty of the plaintiff to take charge of and improve, as might be prescribed by law, all the

avenues, streets, and alleys of the cities of Washington and Georgetown, in said District, for which said purpose the plaintiff was invested with ample powers and privileges, which said acts of Congress are to the court here shown.

And the plaintiff further says that the defendant was incor-
9 porated by the act of Congress of May 17th, 1862, which it accepted, under which it organized, and under which it continues to exercise corporate powers.

That by the provisions of its said charter, by subsequent amendments thereof, and by due authority of law, it was authorized to construct a street railroad from Bridge street, at its intersection with High street, in the city of Georgetown, in said District, to the Navy Yard gate, at the termination of Eighth street east, in the city of Washington, in said District; also a lateral road running along the eastern front of the United States Capitol, from the southern to the northern gate, and thence by "A" street to the depot of the Baltimore and Ohio railroad; also a double or single track branch railway from Boundary street north and Seventh street west, and running down said Seventh street west to the Potomac River; also a railway from Boundary street north and Fourteenth street west, running down said Fourteenth street west to New York avenue and thence by said New York avenue to Pennsylvania avenue west, in said city of Washington, in said District, for which purpose it might enter upon certain streets and avenues of said cities, among which were the following:

Bridge street, in the said city of Georgetown, and B street south, C street northwest, New Jersey avenue northwest, New York avenue northwest, Pennsylvania avenue northwest, Seventh street west, Eighth street east, and Fourteenth street west, in said city of Washington, in said District, and that afterwards it did enter upon, lay down, and construct its tracks along and upon said streets and avenues, crossing the intersecting streets and avenues, and still continues to retain and work its tracks along and upon said streets and avenues.

That by the first section of the charter of said company it is "Provided, That the use and maintenance of said road shall be "subject to the municipal regulations of the cities of Washington
"and Georgetown, respectively, within their several corporate
10 "limits, and that whenever the Capitol grounds shall be en-
"larged then the said routes shall be made to conform "thereto."

The fourth section of the charter of said company provides as follows: "That the said corporation hereby created shall be bound "to keep said tracks, and for the space of two (2) feet beyond the "outer rail thereof, and also the space between the tracks, at all "times well paved and in good order without expense to the United "States or to the cities of Georgetown and Washington."

The fifth section of said charter is as follows: "That nothing in "this act shall prevent the government at any time, at their option, "from altering the grade or otherwise improving Pennsylvania ave-"nue and such other avenues and streets as may be occupied by

"said roads, or the cities of Washington and Georgetown from so "altering or improving such streets and avenues as may be under "their respective authority and control; and in such event it shall "be the duty of said company to change their said railroad so as to "conform to such altered grade and pavements."

The sixth section of said charter provides: "That this act may "at any time be altered, amended, or repealed by the Congress of "the United States."

Which said several provisions of the defendant's charter, as herein set out, remain in full force, save as they have been modified by subsequent legislation. That afterwards, in the due exercise of the powers conferred upon the plaintiff and pursuant to law, it ordered and directed that said streets and avenues should be repaired and improved as follows, amending the grades and laying down new and greatly needed pavements, to wit:

On said Bridge street, wood pavement; said B street south, at its intersection with New Jersey avenue, wood pavement; said B street south, between New Jersey avenue and First street west, asphalt pavement; said C street north, wood pavement; said New Jersey avenue north, wood pavement; said New York avenue northwest, concrete pavement; said Pennsylvania avenue northwest, from Fifteenth street west to Eighteenth street west, concrete pavement; said Pennsylvania avenue northwest, from Eighteenth street west to Rock creek, wood pavement; said Seventh street west, from B street north to Q street north, wood pavement; said Seventh street west, from B street south to the Potomac river, wood pavement; said Eighth street east, wood pavement; said Fourteenth street west, from F street north to New York avenue, concrete pavement; said Fourteenth street west, from New York avenue to H street north, concrete pavement, and said Fourteenth street west, from H street north to Boundary street, wood pavement; of which the defendant had notice.

11

And thereupon it became and was the duty of said defendant, pursuant to said provisions of its said charter, to conform its tracks to said grade, and pave the entire space between two (2) lines running parallel with its tracks, two (2) feet from and outside of its exterior rails, upon and along each and all of said streets and avenues so occupied by it, in conformity with the plan prescribed by the plaintiff, which said duty and obligation said railroad company neglected to do, and did not do; and thereupon the plaintiff, in execution of its orders and plans, and to complete the repairs and improvements of said streets and avenues, was obliged to and did grade and pave said portions of said streets and avenues, which, as aforesaid, should have been graded and paved by said railroad company, to wit:

On said Bridge street, in said city of Georgetown, in said District, nine hundred and eighty-eight and eighty-nine hundredths (988.89) square yards of wood pavement at three dollars and fifty cents ($3.50) per square yard, amounting to the sum of three thousand four hundred and sixty-one dollars and eleven cents ($3,461.11), said repair and improvement of said street being completed and finished by

the plaintiff, to wit, December 5th, 1872. And on said B street south, at its intersection with New Jersey avenue, seventy-
12 one and eleven hundredths (71.11) square yards of wood pavement at three dollars and fifty cents ($3.50) per square yard, amounting to the sum of two hundred and forty-eight dollars and eighty-nine cents ($248.89), said repair and improvement of said street being completed and finished by the plaintiff, to wit, November 24th, 1873. On said B street south, between New Jersey avenue and First street west, five hundred and twenty-five and sixty-three hundredths (525.63) square yards of asphalt pavement at three dollars and twenty cents ($3.20) per square yard, amounting to the sum of one thousand six hundred and eighty-two dollars and two cents ($1,682.02), said repair and improvement of said street being completed and finished by the plaintiff, to wit, November 24th, 1873. On said C street northwest, eight hundred and twenty (820) square yards of wood pavement at three dollars and twenty cents ($3.20) per square yard, amounting to the sum of two thousand six hundred and twenty-four dollars ($2,624), said repair and improvement of said street being completed and finished by the plaintiff, to wit, December 10th, 1873. On said New Jersey avenue west, between B street and C street north, one hundred and eighty-eight and thirty-three hundredths (188.33) square yards of wood pavement at three dollars and thirty cents ($3.30) per square yard, amounting to the sum of six hundred and twenty-one dollars and forty-nine cents ($621.49), said repair and improvement of said avenue being completed and finished by the plaintiff, to wit, December 10th, 1873. On said New York avenue north, between Fourteenth and Fifteenth streets west, two hundred and twenty-four (224) square yards of concrete pavement at three dollars and twenty cents ($3.20) per square yard, amounting to the sum of seven hundred and sixteen dollars and eighty cents ($716.80) said repair and improvement of said avenue being completed and finished by the plaintiff, to wit, July 26, 1872. On said Pennsylvania avenue north, between Fifteenth street and Eighteenth street
13 west, one thousand and eight (1,008) square yards of concrete pavement at three dollars and twenty cents ($3.20) per square yard, amounting to the sum of three thousand two hundred and twenty-five dollars and sixty cents ($3,225.60), said repair and improvement of said avenue being completed and finished by the plaintiff, to wit, September 18th, 1872. On said Pennsylvania avenue north, between Eighteenth street west and Rock creek, two thousand four hundred and twenty-six (2,426) square yards of wood pavement at three dollars and fifty cents ($3.50) per square yard, amounting to the sum of eight thousand six hundred and seventeen dollars ($8,617), said repair and improvement of said avenue being completed and finished by the plaintiff, to wit, September 18th, 1872. On said Seventh street west, from B street north to Q street north, two thousand nine hundred and fifty-three and eighteen hundredths (2,953.18) square yards of wood pavement at three dollars and thirty cents ($3.30) per square yard, amounting to the sum of nine thousand seven hundred and forty-five dollars and forty-

nine cents ($9,745.49), said repair and improvement of said street being completed and finished by the plaintiff, to wit: On said Seventh street west, between B and D streets north, November 11th, 1872; on said Seventh street west, between D and E streets north, October 30th, 1873; on said Seventh street west, between E and G streets north, November 3d, 1873; on said Seventh street west, between G and M streets north, October 30th, 1873; on said Seventh street west, between M and Q streets north, January 6th, 1874; on said Seventh street west, from B street south to the Potomac river, one thousand eight hundred and sixty (1,860) square yards of wood pavement at three dollars and eighty cents ($3.80) per square yard, amounting to the sum of seven thousand and sixty-eight dollars ($7,068), said repair and improvement of said street being completed and finished by the plaintiff, to wit, January 30th, 1872. On
14 said Eighth street east, from Pennsylvania avenue to M street south, eleven hundred and fifty-five and fifty-five hundredths (1,155.55) square yards of wood pavement at three dollars and fifty cents ($3.50) per square yard, amounting to the sum of four thousand and forty-four dollars and forty two cents ($4,044.42), said repair and improvement of said street being completed and finished by the plaintiff, to wit, January 9th, 1873. On said Fourteenth street west from F street north to H street north, five hundred and fifty-five and fifty-five hundredths (555.55) square yards of concrete pavement at three dollars ($3) per square yard, amounting to the sum of one thousand six hundred and sixty-six dollars and sixty-six cents ($1,666.66), said repair and improvement of said street being completed and finished by the plaintiff, to wit: On said Fourteenth street west, between F street and New York avenue north, December 4th, 1873; on said Fourteenth west, between New York avenue and H street north, January 15th, 1874. On said Fourteenth street west between H street north and N street north, one thousand one hundred and nine (1,109) square yards of wood pavement at three dollars and seventy cents ($3.70) per square yard, amounting to the sum of four thousand one hundred and three dollars and thirty cents ($4,103.30), said repair and improvement of said street being completed and finished by the plaintiff, to wit, December 4th, 1872. On said Fourteenth street west, between N street north and Boundary street, in said city of Washington, two thousand and forty-eight (2,048) square yards of wood pavement at four dollars and twenty cents ($4.20) per square yard, amounting to the sum of eight thousand six hundred and one dollars and sixty cents ($8,601.60), said repair and improvement of said street being completed and finished by the plaintiff, to wit, December 1, 1872.

Which said several sums were and are the just and reasonable costs of the said several items of paving as hereinbefore set forth, amounting in total to the sum of fifty-six thousand four hun-
15 dred and twenty-six dollars and thirty-eight cents ($56,426.38), which said sum, in the form of an itemized account, was afterwards, to wit, on the — day of February, 1880, presented to the defendant and payment thereof demanded, which was refused at the District aforesaid.

Whereby and by the force and effect of the statutes aforesaid a right of action accrued thereon to the plaintiff to maintain its said suit against the defendant to recover said sum of fifty-six thousand four hundred and twenty-six dollars and thirty-eight cents ($56,426.38), with interest thereon from said — day of February, 1880, for which it asks judgment.

A. G. RIDDLE,
Attorney for Plaintiff.

The defendant is to plead hereto on or before the first special term of the court, occurring twenty (20) days after service hereof; otherwise judgment.

A. G. RIDDLE,
Attorney for Plaintiff.

Pleas. Filed Nov. 24, 1883. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THE DISTRICT OF COLUMBIA
vs.
THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY. } At Law. No. 22457.

The defendant, for plea, says that by its charter there was imposed upon it the duty to change the locality of its railroad so as to conform to changes which might be made in the grades or
16 otherwise in the streets and avenues; and, further, to keep the spaces embraced within two lines drawn two feet from the outer rails of its tracks and running parallel with said rails at all times well paved and in good order without expense to the United States or the cities of Washington and Georgetown; and that the said duty was in force at the different times mentioned in the declaration when the work was done, the cost whereof is alleged to be chargeable to the defendant.

And the defendant says that the measure of the said duty and the manner of performing the same depended upon the law of the land and not upon the discretion or direction of the plaintiff, and that the said duty was owing and to be performed by the defendant and not by the plaintiff, except only in case of default by the defendant after due notice to perform the same.

And the defendant says it performed and discharged said duty by changing, at its own expense, its railroad so as to make it conform to any and all changes in the grades or otherwise in said avenues and streets, and by paving, and keeping at all times well paved and in good order, the entire space aforesaid, without expense to the United States or the cities of Washington and Georgetown, or to the District of Columbia, the successor of said cities; but that, notwithstanding such performance and discharge of the said duty, the Board of Public Works, an agent of the plaintiff, constituted by the act of Congress of the 21st of February, 1871, entitled "An act to provide a government for the District of Columbia," claimed, to wit, in the

month of June, 1871, and afterwards, that by virtue of the said act and the legislation of the plaintiff thereunder, it, the said Board, was invested with the power and authority to pave and repair the streets and avenues in the declaration mentioned in its discretion, and, independent of the duty imposed upon the defendant, to keep the space aforesaid at all times well paved and in good repair, and without regard to its rights and interests in the performance and discharge of such duty.

17 And the defendant further says that the said claim was without authority of law and null and void, but that the said Board insisted thereon, and in execution thereof and without any notice from the plaintiff or the said Board, or other agent of the plaintiff, to the defendant to perform and discharge its said duty, and in denial of the said duty of the defendant and its rights and interests in the performance and discharge of said duty, and notwithstanding the whole of the aforesaid space was well paved and in good order, made, in violation of law, divers contracts for the paving of the streets and avenues in the declaration mentioned, including as well the aforesaid spaces as the residue of the said streets and avenues; and that in pursuance of such contracts new pavements of unfit material and at exorbitant and unreasonable cost were laid down, but that said new pavements were not laid down in any portion of the space aforesaid except the two feet thereof lying beyond the outer rails of the track of the defendant.

And the defendant says that, at its own expense, it from time to time changed its railroad so as to make it conform to changes in the grades or other changes in said new pavements.

And the defendant further says that the two feet of said space whereon the said new pavements were laid were, when said new pavements were laid, well paved and in good order, but that the pavement then on said two feet of said space was dug up by the said Board and the new pavement substituted.

And the defendant further says that no notice was given by the plaintiff or the said Board or other agent of the plaintiff to the defendant to lay down said new pavements on the said two feet of said space, nor was it claimed by the plaintiff or the said Board or other agent of the plaintiff that the defendant was in default in failing to lay down such new pavements, nor was any opportunity ever afforded the defendant to lay down the same, but on the contrary the duty of the defendant to lay down the same was denied,

18 and the cost of the said work was charged in the same manner as if the defendant had not been charged with any duty in the premises, and remained so charged for many years, to wit, until the — day of ——, 1880.

2. And for a further plea the defendant says that the plaintiff did not, in the due exercise of its powers and pursuant to law, order and direct that the said streets and avenues should be repaired and improved as alleged.

3. And for a further plea the defendant says that the plaintiff did not in fact order and direct that the said streets and avenues should be repaired and improved as alleged.

4. And for a further plea the defendant says it admits that pursuant to its charter it was bound to change its railroad so as to make it conform to changes in the grades of the said streets and avenues, and the defendant says that when, in the work done by the plaintiff on the said streets and avenues, changes were made in the grades the defendant in all instances promptly and faithfully discharged its duty in the premises by changing its railroad so as to make it conform to said changes in the grades, and that said changes of its railroad were made at its own expense and without expense to the plaintiff.

5. And for a further plea the defendant says that it was not the duty of the defendant to pave the alleged space in conformity with the plans prescribed by the plaintiff as alleged, but that it was the duty of the defendant to keep at all times well paved and in good order the alleged space without expense to the United States or the cities of Georgetown and Washington, which duty the defendant says it faithfully performed and discharged.

6. And for a further plea the defendant says that it never re-
19 ceived any notice to pave the alleged space in conformity with the plans prescribed by the plaintiff as alleged, but that on the contrary the plaintiff claimed that it was its right and duty so to pave, and denied the right and duty of the defendant in the premises.

7. And for a further plea the defendant says that the plaintiff was not obliged to make, as alleged, the repairs and improvements, with the cost whereof it is sought in this action to charge the defendant, because of any default or neglect of duty by the defendant to make the same, but that the same were voluntarily made by the plaintiff under a claim of its right to make the same and irrespective of any duty of the defendant or its default or neglect therein.

8. And for further plea the defendant says that the plaintiff did not grade and pave as alleged, and that the alleged cost is not just and reasonable, and that the plaintiff has not paid the alleged sums of money wherewith it seeks to charge the defendant.

9. And for further plea the defendant says that it did not undertake and promise in manner and form as the plaintiff has above complained.

10. And for a further plea the defendant says that the plaintiff ought not to have and maintain its action aforesaid against it, because it says that the said action being for indemnity and reimbursement for moneys expended by the plaintiff, and not for the defendant's failure and neglect to perform duties imposed upon it by law, the said defendant did not at any time within three years next before the commencement of this suit undertake or promise in manner and form as the plaintiff hath above complained against it, and this it is ready to verify. Wherefore it prays judgment, &c.

20 11. And for a further plea the defendant says that the plaintiff ought not to have and maintain its action aforesaid, because it says that the said several supposed causes of action in the said declaration mentioned being for indemnity and reimbursement for moneys expended by the plaintiff, and not for the defendant's

failure and neglect to perform duties imposed upon it by law, the said several supposed causes of action did not, nor did either of them or any of them, accrue to the said plaintiff at any time within three years before the commencement of this suit in manner and form as the plaintiff hath above complained, and this it is ready to verify. Wherefore it prays judgment, &c.

12. And for a further plea the defendant says that the plaintiff ought not to have and maintain its action aforesaid against it, because it says that it, the said defendant, did not at any time within three years next before the commencement of this suit undertake or promise in manner and form as the said plaintiff hath above thereof complained against it, and this it is ready to verify. Wherefore it prays judgment, &c.

13. And for a further plea the defendant says that the plaintiff ought not to have and maintain its action aforesaid, because it says that the several supposed causes of action in the said declaration mentioned did not, nor did either of them or any of them, accrue to the said plaintiff at any time within three years before the commencement of this suit in manner and form as the plaintiff hath above complained, and this it is ready to verify. Wherefore it prays judgment, &c.

ENOCH TOTTEN,
W. D. DAVIDGE,
Att'ys for Def't.

21 Filed Nov. 26, 1883. R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia.

THE DISTRICT OF COLUMBIA
vs.
THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY. } At Law. No. 22457.

The plaintiff joins issue upon each and every one of the defendant's first 9 pleas in its behalf plead to the plaintiff's amended declaration herein.

And to the defendant's ninth, tenth, eleventh, twelfth, and thirteenth pleas to the plaintiff's amended declaration the plaintiff demurs, and says the same are bad in substance.

A. G. RIDDLE,
Att'y for Plaintiff.

NOTE.—Among the matters of law intended to be argued in support of the above demurrer are the following:

1. That the nature of the case is such that the statute of limitations as plead does not apply.

2. That the sum to be recovered is a portion of the general revenues of the District, and the statute of limitations is not well plead.

(19 Min. C. C., p. 109.)

THURSDAY, *M'ch* 27, 1884.

Justice Hagner presiding.

THE DISTRICT OF COLUMBIA
vs.
THE WASHINGTON & GEORGETOWN R. R. Co., Def't. } At Law. No. 22457. Cal. 60.

Now comes here as well the plaintiff, by its attorney, Mr.
22 Riddle, as the defendant, by its attorneys, Messrs. Totten & Davidge, and thereupon this cause comes on to be heard upon the plaintiff's demurrer to the defendant's pleas of the statute of limitation to plaintiff's amended declaration, and, the same having been heard, it is considered that said demurrer be, and the same is hereby, sustained. Whereupon comes a jury of good and lawful men of this District, to wit, James H. Mead, James L. Davis, George W. Hager, Adam Gaddis, William Budd, William I. June, John James, Frank W. Dowling, William H. Barrow, Ashton S. H. White, Charles J. Gawler, and Washington Tilley, who, being duly sworn to try the issues above joined, after hearing a part of the evidence, are respited until the meeting of the court to-morrow morning.

(19 Min. C. C., p. 121.)

TUESDAY, *April* 8, 1884.

Justice Hagner presiding.

THE DISTRICT OF COLUMBIA, Pl't'ff,
vs.
THE WASHINGTON & GEORGETOWN R. R. Co., Def't. } At Law. No. 22457. Cal. 60.

Now again come here the parties aforesaid, in manner aforesaid, and the same jury that was respited yesterday, who, after the case is given them in charge, retire to their room to consider of their verdict, with permission, if they agree during the adjournment of the court, after reducing their verdict to writing, signing, sealing, and delivering the same to their foreman, to separate until the meeting of the court to-morrow morning.

23 (Min. 19 C. C., p. 123.)

SATURDAY, *April* 12*th*, 1884.

Justice Hagner presiding.

THE DISTRICT OF COLUMBIA, Plaintiff,
vs.
THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY, Defendant. } At Law. No. 22457. Cal. 60.

Now again come here the parties aforesaid, in manner aforesaid, and the same jury that retired to their room on Tuesday last return

into court and on their oath say they find the issues aforesaid in favor of the plaintiff, and that the money payable to it by the defendant, by reason of the premises, is the sum of forty-one thousand and eighty dollars, besides costs. Therefore it is considered that the plaintiff recover against said defendant forty-one thousand and eighty dollars, as aforesaid, being the money payable by it to the plaintiff by reason of the premises, and $—— for its costs of suit, and have execution thereof.

Motion for New Trial. Filed April 16, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THE DISTRICT OF COLUMBIA
vs.
THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY. } At Law. No. 22457.

And now comes the said defendant and moves the court
24 for a new trial, for the reason below stated, which motion is addressed to the justice of the court presiding at the trial of this cause and is made on his minutes, to wit:

First. Because the evidence was insufficient to support or warrant the said verdict.

Second. Because the damages assessed by the jury are excessive.

This motion is based on a case to be settled in the usual manner.

W. D. DAVIDGE,
Attorney for Defendant.

Motion for New Trial on Exceptions. Filed April 16, 1884. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THE DISTRICT OF COLUMBIA
vs.
THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY. } At Law. No. 22457.

And now comes the said defendant and moves the court for a new trial on the exceptions reserved and taken at the trial, the bills of exceptions to be prepared and certified.

W. D. DAVIDGE,
Att'y for Def't.

25 *Stipulation. Filed July* 17, 1884. *R. J. Meigs, Clerk.*

DISTRICT OF COLUMBIA
vs.
WASHINGTON AND GEORGETOWN R. R. COMPANY. } No. 22457.

It is agreed in the above-entitled cause that the statement of evidence and bills of exception may be prepared and signed *nunc pro*

tunc after the adjournment, and that for that purpose the term may be prolonged or the pending motion for a new trial continued.
July 17, 1884.

W. D. DAVIDGE,
Att'y for Def't.
RIDDLE, *For Dist.*

26 (M. 19, p. 533.)

In the Supreme Court of the District of Columbia, Holding a Special Term or Circuit Court.

SATURDAY, *May 9th*, 1885.

Session resumed pursuant to adjournment, Hagner, justice, presiding.

THE DISTRICT OF COLUMBIA, Pl'ff,
vs.
THE WASHINGTON AND GEORGETOWN RAILROAD CO., Def't. } At Law. No. 22457.

Now again comes here the defendant, by its said attorney, and tenders to the court here its bill of exceptions to the rulings of the court on the trial of this case, and prays that they may be duly signed, sealed, and made a part of the record now for then, which is done accordingly.

27 Filed April 25, 1884.

In the Supreme Court of the District of Columbia the 23 day of April, 1884.

THE DISTRICT OF COLUMBIA, Plaintiff,
vs.
THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY, Defendant. } At Law. No. 22457.

The defendant having appealed to the general term from the judgment pronounced herein on the twelfth of April, 1884, in the circuit court, and Henry Hurt, surety for said appeal, for themselves and each of them, their and each of their heirs and personal representatives, appearing and submitting to the jurisdiction of the said general term, hereby undertakes to abide by, perform, and pay its judgment, which they agree may be pronounced against all of them.

WASHINGTON & GEO. T. R. R. CO.,
Per H. HURT, *P't, Appellant.* [SEAL.]
H. HURT, *Surety.*

Approved April 23, '84.

A. B. HAGNER,
Asso. Justice.

28 *Bill of Exceptions. Filed May* 9, 1885, *now for then. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THE DISTRICT OF COLUMBIA
vs.
THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY. } At Law. No. 22457.

At the trial of this cause the plaintiff, a municipal corporation duly created by law, to maintain the issues on its part joined, gave in evidence the charter of the defendant, being an act of the Congress of the United States entitled "An act to incorporate the Washington and Georgetown Railroad Company," approved May 17, 1862, a copy of which act is hereunto annexed, marked "Exhibit A," and made part of this bill of exceptions; and read in evidence from the said act sections one, four, five, and six, as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Eliab Kingman, Franklin Tenney, J. J. Coombs, Sayles J. Bowen, Charles H. Upton, Henry Addison, Hallett Kilbourne, and their associates and assigns, be, and they are hereby, created a body corporate under the name of the 'Washington and Georgetown Railroad Company,' with authority to construct and lay down a double-track railway, with the necessary switches and turnouts, in the cities of Georgetown and Washington, in the District of Columbia, through and along the following avenues and streets: Commencing on Bridge street, at the intersection with High street, or at such point on said Bridge street east thereof, in the city of Georgetown, as may be designated hereafter by the corporate authorities thereof; along said Bridge street to its intersection with the street running to the tubular bridge over Rock creek to Pennsylvania avenue, in the city of Washington; along said avenue to Fifteenth street west; along said street south to said avenue; along said avenue to the foot of the Capitol
29 grounds; thence around the southern boundary of the Capitol grounds, and along their southern boundary easterly to Pennsylvania avenue; along said Pennsylvania avenue to Eighth street east, or Garrison street, and along said street south to the Navy Yard gate; with a lateral road running along the eastern front of the Capitol from the southern to the northern gate, and thence by 'A' street to the depot of the Baltimore and Ohio railroad, and thence from said depot through First street west to Pennsylvania avenue, so as to intersect with said main road; also a double or single track branch railway, commencing at Boundary street north and running down Seventh street west to Pennsylvania avenue and to the Potomac; also a railway commencing at Boundary street and running down Fourteenth street west and New York avenue to Pennsylvania avenue to a point of intersection with said first-mentioned railway; with the right to run public carriages thereon drawn by

horse power, receiving therefor a rate of fare not exceeding five cents a passenger for any distance between the termini of either of the said main railway, or between the termini of either of said branch railways, or between either terminus of said main railway and the terminus of either of said branch railways: Provided, That the use and maintenance of said road shall be subject to the municipal regulations of the cities of Washington and Georgetown, respectively, within their several corporate limits; and that whenever the Capitol grounds shall be enlarged, then the said routes shall be made to conform thereto.

"SEC. 4. And be it further enacted, That the said corporation hereby created shall be bound to keep said tracks, and for the space of two feet beyond the outer rail thereof, and also the space between the tracks, at all times well paved and in good order, without expense to the United States or to the cities of Georgetown and Washington.

"SEC. 5. And be it further enacted, That nothing in this act shall prevent the Government, at any time at their option, from altering the grade or otherwise improving Pennsylvania avenue and such other avenues and streets as may be occupied by said roads, or the cities of Washington and Georgetown from so altering or improving such streets and avenues as may be under their respective authority and control, and in such event it shall be the duty of said company to change their said railroad, so as to conform to such altered grade and pavements.

"SEC. 6. And be it further enacted, That this act may at any time be altered, amended, or repealed by the Congress of the United States."

On behalf of the defendant it was admitted that the said charter was duly accepted shortly after its passage, and that under and in pursuance of it the defendant constructed its railroad in the certain avenues and streets, as alleged in the declaration.

It was agreed that all acts of Congress relating to the defendant should be considered as in evidence.

The plaintiff then gave in evidence an act of the District of Columbia entitled "An act making appropriations for improvements and repairs in the District of Columbia, and providing for the payment thereof," approved July 10, 1871; and, also, the plan of improvements referred to in the said act, together with the letters of the members of the Board of Public Works, dated June 20, 1871, and the letter of William D. Cassin, dated June 1, 1871, which act, plan, and letters are hereunto annexed, marked "Exhibit B," and made part hereof.

The plaintiff then read from the minutes of the Board of Public Works, a body created by the act of Congress entitled, "An act to provide a government for the District of Columbia," approved February 21, 1871, certain entries tending to prove that the said Board of Public Works, at divers times awarded to divers parties contracts for improving, grading, and laying down new pavements in certain avenues and streets in the cities of Washington and Georgetown, in which the railroad of the defendant had been constructed and was

then in operation, and that, in pursuance of such awards, contracts to lay new pavements were afterwards prepared and executed, and that under the said awards and contracts new pavements were laid as follows: In Georgetown, on Bridge street, from Market street to
31 Rock Creek; and in the city of Washington as follows: On B street south, at its intersection with New Jersey avenue; on C street north; on New Jersey avenue, between B and C streets north; on New York avenue, between 14th and 15th streets; on Pennsylvania avenue, between 15th and 18th streets west; on Pennsylvania avenue, from 18th street west to Rock Creek; on 7th street west, from B street north to Q street north; on 8th street east, from Pennsylvania avenue to M street south, or the Navy Yard gate; on 14th street west, from New York avenue to H street north, being the first, second, fourth, fifth, sixth, seventh, eighth, ninth, eleventh, and part of the twelfth items of work in the declaration alleged to have been done by the plaintiff.

The plaintiff then read in evidence two ordinances of the corporation of Washington, the predecessor of the plaintiff, approved June 10, 1870, and May 2, 1871, which ordinances are as follows:

"An act to pave Seventh street southwest, from B street to Water street southwest.

"Be it enacted by the board of aldermen and board of common council of the city of Washington, That the mayor be, and he is hereby, authorized and requested to cause the carriage-way of Seventh street southwest, from B to Water street southwest, to be paved with a wood pavement.

"SEC. 2. Be it further enacted, That the work be executed in the manner and under the superintendence provided by law; and, to defray the expenses of said improvement, a special tax, equal to the cost thereof, is hereby imposed and levied on all lots or parts of lots bordering on the line of the improvement; said tax to be assessed and collected in conformity with existing law: Provided, That the expense of paving at intersection of streets shall not be assessed on the owners of private property, but shall be paid out of the ward funds.

"Approved June 10, 1870."

32 "An act to pave Fourteenth street west, from H street north to the Boundary.

"Be it enacted by the board of aldermen and board of common council of the city of Washington, That the mayor be, and he is hereby, authorized to cause Fourteenth street west to be paved from H street north to the Boundary.

"SEC. 2. And be it further enacted, That the kind of pavement to be put down shall first be determined by a commission, composed of the following gentlemen: Hon. Matthew G. Emery, mayor; General John S. Crocker, John F. Cook, George Burgess, Robert H. Booker, C. H. Holden, president of the board of common council, and R. C. Louis, chairman of the committee on improvements of

the board of common council: Provided, That said work shall not be commenced before the spring of 1871.

"SEC. 3. And be it further enacted, That to carry out the provisions of this act a committee of seven be directed to see that the work be properly executed, composed of the presidents of both boards, the chairman of committee of improvements of both boards, the mayor, and two citizens of the second ward, on the line of Fourteenth street, to be appointed by the mayor.

"SEC. 4. And be it further enacted, That to defray the expenses of said improvements a special tax equal to the cost thereof be assessed on all lots or parts of lots along the line of said improvement, to be assessed and collected according to the provisions of law.

"SEC. 5. And be it further enacted, That all intersections shall be paid for out of the second ward fund; also for the paving in front of public alleys and in front of all churches and school property: Provided, That the work be done by contract and given to the lowest responsible bidder.

"Approved May 2, 1871."

The plaintiff then gave evidence tending to prove that under and in pursuance of the said ordinances contracts had been duly made by the said corporation of Washington for laying new pavements on Seventh street west, from B street south to the Potomac river, and on Fourteenth street west, from H street north to the boundary of the city, and that when the said corporation ceased to exist
33 and the new government created by the said act approved February 21, 1871, went into operation the pavements authorized by the said ordinances had been partially laid, but that the work of laying the said pavements under the said contracts was continued and completed under the new government.

The said pavements constitute the tenth, thirteenth, and fourteenth items of work alleged by the declaration to have been done by the plaintiff.

The third item alleged in the declaration was abandoned at the trial by the plaintiff.

All the aforesaid awards and the said contracts, as well those made by the plaintiff as the two made by its predecessor, the Corporation of Washington, called for and required the laying of new pavements from curb to curb in the avenues and streets to be improved, without any reference to the railroad of the defendant or any duty on the part of the defendant in relation to the said pavements or any of them.

The dates of the said awards and contracts and the contract prices for the respective pavements aforesaid were as set forth in the tabular statement hereunto annexed, marked "Exhibit C," and made part hereof.

The said awards and contracts were severally given in evidence against the several objections of the defendant, made as the said awards and contracts were offered, and severally overruled, and the defendant from time to time excepted.

A copy of the said awards, in substance, and a copy of the said

contracts made by the plaintiff are hereunto annexed, marked "Exhibit D" and "Exhibit E," and made part hereof.

The plaintiff further gave evidence tending to prove that the pavements laid as aforesaid were of the materials and were finished at the times alleged, respectively, in the declaration, and that all the said pavements, as laid, extended only from the curb of the street to the exterior rails of the railroad of the defendant, and did
34 not embrace the space between the said exterior rails; that when, in the execution of the said contracts, a change of the said railroad became necessary, whether by reason of the alteration of the grade of the avenues and streets or otherwise, such change was promptly made from time to time by the defendant at its own expense, and that the only work done by the plaintiff along the line of the defendant's railroad for which recovery is sought in this action was the pavement of two feet outside of the exterior rail on each side, for the cost whereof only a recovery was sought in this action.

The plaintiff then called as a witness William O. Roome, and by him gave evidence tending to prove that he was and is in the employ of the plaintiff, and chief of the special assessment division, having in charge collection of special assessments for improvements levied by the plaintiff; that after the passage of the act of Congress approved June 19, 1878, and on or about July 19, 1878, the Commissioners of the District of Columbia directed the general revision of the assessments, and that said revision was continued under the act of June 27, 1879, and that in making said revision the witness at first acted as assistant, but afterwards had charge of and completed the revision; that in revising the assessments the witness was guided and governed by the vouchers and papers of the plaintiff; that before the revision there was no charge nor any assessment against the defendant on account of pavements laid in avenues and streets traversed by its railroad, except in the six instances hereinafter mentioned, in which instances it was assessed on account of its railroad, as an owner of property abutting upon the street, to the extent of the two feet on each side beyond the exterior rails of its railroad; that, except in these instances, by the original assessments, including those made under the contracts above mentioned with the Corporation of Washington, as they stood before revision, one-third of the cost of such pavements was assessed against the lots
35 fronting upon the avenue or street, being one-sixth on each side, and the other two-thirds were assessed to the plaintiff; that by the revision the cost of two feet of the said pavements beyond the exterior rails was taken off the said lots and the plaintiff, and was assessed against the defendant; that drawback certificates were issued to the owners of the said lots, as required by the said acts; that in relieving the said lots and the plaintiff, and assessing the defendant, there was not a mere transfer of part of the original charges against the abutting lots and the plaintiff to the defendant, but that the elements which entered into such charges were carefully revised, and, where erroneous, corrected, and that the different areas of square yards thus assessed against the defendant are those set out in the declaration in the items of work alleged to have been done

by the plaintiff, except the third item, and that the prices assessed for the said areas are also those set out in the declaration, with the said exception; that in respect of the six instances where assessments were originally made against the defendant the same were as follows: Seventh street west, from B street south to the river; Fourteenth street west, from H to N streets north; New York avenue, between Fifteenth and Fourteenth streets west; Pennsylvania avenue, between Fifteenth and Eighteenth streets west; and from Eighteenth street west to Rock Creek; Fourteenth street west, from N street north to the Boundary; and Eighth street east, from Pennsylvania avenue to M street south, being the tenth, thirteenth, sixth, seventh, eighth, fourteenth, and eleventh items of work in the declaration alleged to have been done by the plaintiff; that in these instances the defendant was assessed and certificates of indebtedness were made out as follows:

7th street west, from B street south to river:

1,860 sq. yds. at $3.80 per sq. yd..... $7,068 00
Certificate of indebtedness No. 3378, made out August 15, 1872, for..... $7,068 00

36 14th street west, from H to N streets north:

1,109 sq. yds. at $3.70 per sq. yd..... $4,103 30
Certificate of indebtedness No. 3379, made out August 23, 1872, for..... $4,103 30

New York avenue, between 15th and 14th streets west:

224 sq. yds. at $3.20 per sq. yd..... $716 80
Certificate of indebtedness No. 3380, made out Sept. 2, 1872, for..... $716 80

Pennsylvania avenue from 15th to 18th streets west, and from 18th street west to Rock creek:

2,462 sq. yds. at $3.50 per sq. yd..... $8,617 00
1,008 sq. yds. at $3.20 per sq. yd..... 3,225 60

$11,842 60
Certificate of indebtedness No. 3381, made out Sept. 26, 1872, for..... $11,842 60

14th street west, from N street north to the Boundary:

2,048 sq. yds. at $4.20 per sq. yd..... $8,601 60
Certificate of indebtedness No. 3382, made out March 23, 1873, for..... $7,577 60

8th street east, from Pennsylvania avenue to M street south:

$1,155\frac{55}{100}$ sq. yds. at $3.50 per sq. yd..... $4,044 42
Certificate of indebtedness No. 3383, made out April 15, 1873, for..... $2,894 50

That all the foregoing certificates of indebtedness bore interest at ten per cent. and were issued as liens against the railroad of defendant, and that the same, made out as aforesaid, were, on or about

the 15th of August, 1873, sold for value to the First National Bank of New York, and the defendant notified of such sale, and are still outstanding, never having been repurchased or redeemed by the plaintiff; that no other assessments were made against the defend-
37 ant, and that the paper hereunto annexed, marked "Exhibit F," and made part hereof, is a true copy of the certificates of indebtedness made out as aforesaid, except that the blanks were filled up and that the said certificates were not on their face in favor of any party, but merely certified an alleged indebtedness of the defendant on account of the respective improvements, and were issued against the railroad of defendant.

The plaintiff then read and gave in evidence the said act of Congress approved June 19, 1878, entitled "An act to provide for a revision and correction of assessments for special improvements in the District of Columbia, and for other purposes."

And also read and gave in evidence the said act approved June 27, 1879, entitled "An act fixing the rate of interest upon arrearages of general taxes and assessments for special improvements now due to the District of Columbia, and for a revision of assessments for special improvements, and for other purposes."

The plaintiff further gave evidence tending to prove that the different sums of money alleged by the declaration to have been paid by the plaintiff for and on account of the two feet of the respective pavements beyond the exterior rails of the defendant's railroad were, in fact, paid by the plaintiff at divers times in money and the securities of the plaintiff, by being included in the payments to the several contractors for the pavements laid in the said avenues and streets, and that the amounts so paid were the just and reasonable costs of the said two feet of the respective pavements, except the third item; that copies of the assessments in the six instances aforesaid were left at the office of the defendant at or about the times when the said assessments were made against the said railroad of defendant; and that after the aforesaid revision, which included as well the pavements for which certificates of assessment had been made out in the six instances aforesaid as the other
38 pavements, demand of payment was made of the defendant at or about the time and in the manner alleged in the declaration.

The plaintiff then read in evidence the following entry in the journal of the Board of Public Works under date of September 26, 1871:

The following order of the Board was referred to the attorney for the Board for an opinion: "Ordered, That hereafter all passenger horse-railroad companies in the District of Columbia be required to pave the inside of and between their tracks with the same pavement as the remainder of the street, or with rectangular blocks of granite or hard sandstone. The use of cobble-stones under any circumstances is prohibited."

When the foregoing entry was offered the defendant objected to its admissibility on the ground of irrelevancy, but the court over-

ruled the objection and allowed the said entry to be read in evidence, and the defendant excepted.

The plaintiff then offered in evidence the following entries in the journal of the Board of Public Works, under date of October 9, 1871, and August 21, 1872—that is to say:

"OCTOBER 9, 1871.

The attorney for the board submitted the following report:

WASHINGTON, D. C., *October* 7, 1871.

GENTLEMEN: I am of the opinion that the Washington and Georgetown and Metropolitan companies can be required to pave the tracks of their roads in whatever reasonable modes and with whatever proper materials you may desire. They are not above, but subject to, your official control in these respects. I do not deem it necessary at present to present the considerations on which this opinion is based. The subject is one in relation to which there is ground for different views, but I have endeavored to form a correct conclusion, and I think I have done so.

Very respectfully,

(Signed) WM. A. COOK,
Attorney Board of Public Works."

39 "AUGUST 21, 1872.

"Mr. Riker *et al.*, representing the W. & G. R. R. Co., called upon the Board in relation to the track on Pennsylvania avenue east, and were informed that the Board would not consent to have the track remain in the center of the street as at present, but would insist upon its being removed to either side of the park from First to Eighth street east. The Board said that, so far as they were concerned, they were inclined to assess the property of the railroad company in the same manner as that of private individuals were under the law, if it could — done."

And the plaintiff further read and offered in evidence, from the minutes of said Board, entry under date of September 14, 1871, showing the establishment by said Board of Public Works of certain rates or charges to be paid by said Board, known as "Board rates," for all work done by them for the said board, including the character of work sued for in this action, which said rates were established, after due advertisement, by said Board, and the submission of proposals, to wit, by a number of contractors, to do the work called for by said advertisement, including the kind of work done by the plaintiff and sued for in this action.

And to the admissibility of each of the said offered entries the defendant objected on the ground of irrelevancy; but the court severally overruled the objections, and allowed each of said entries to be read to the jury, and the defendants severally excepted.

The plaintiff then severally offered in evidence the following copies of letters from the letter books of the Board of Public Works, having first shown that due notice to produce the originals had been given to the defendant, and that it had failed to produce, and

that it was the practice of the Board of Public Works to take and keep copies in the said letter books of all letters mailed or otherwise sent. To the introduction of the said copies the defendant severally excepted on the ground of irrelevancy, as the said copies were
40 offered; which objections were overruled, and the defendant severally excepted; and the said copies of letters were read in evidence to the jury, and are as follows:

APRIL 9, 1872.

S. S. Riker, Esq., president W. & G. R. R. Company, Washington, D. C.

SIR: The Board are now paving the carriage-way and east side of Centre market, from canal bridge to Pennsylvania avenue, with treated wood. It is noticed that you are paving between and in the railroad tracks with cobble-stones.

The Board intend to have the whole carriage-way paved alike, and have so directed the contractor.

You will please desist from laying any more cobble-stone.

Very respectfully, ALEX. R. SHEPHERD,
Vice-President.

MAY 20, 1872.

S. S. Riker, Esq., president W. & G. R. R. Company, Washington, D. C.

SIR: Mr. L. S. Filbert has been directed to remove the cobble-stones from between the tracks of the railroad on New York avenue, between 14th and 15th streets, and at the intersection of New York avenue and 14th street, and to pave the same with the Scharfe pavement, the same as the rest of the street.

You will confer a favor by affording him all the facilities in your power for the speedy completion of the work.

Very respectfully, ALEX. R. SHEPHERD,
Vice-President.

JULY 19, 1872.

S. S. Riker, Esq., president W. & G. R. R. Company, Washington, D. C.

SIR: Your track around the circle at 23d street and Pennsylvania avenue is below the grade.

Please have it raised to grade at once, in order that the paving of the avenue may not be delayed. I hope you will
41 do this work to-morrow. It is important that the work on the avenue should not be stopped.

Yours respectfully,
JAMES A. MAGRUDER,
T. B. P. W.

AUGUST 2, 1872.

Sylvanus S. Riker, Esq., president Washington & Georgetown R. R. Co.

SIR: Your letter of the third instant, complaining of the action of Chief Engineer Phillips in causing the space between your tracks on Pennsylvania avenue east to be paved with wood, has been received, and in reply I will state that the order under which he is acting emanated from the Board of Public Works, and he is merely carrying out their instructions in causing the paving of the track to be of the same material as the remainder of the avenue. The law of Congress creating this board provided that we should make all rules and regulations necessary for keeping in repair the streets and avenues of the District. We regard this as a very essential step towards keeping this important avenue in a good state of repair, and are convinced that no street can be kept in a proper state of repair if a cobble-stone pavement is permitted to remain in its centre, disfiguring and injuring the appearance of the whole street, and rendering a proper degree of cleanliness utterly impossible. The Board propose that, as the people of this District are incurring a great expense in putting its main streets and avenues in a good condition, that all corporations shall at least comply with the same regulation that the citizens do; and I think that you, upon reflection, will acknowledge that this is but right and just.

Very respectfully, ALEX. R. SHEPHERD,
Vice-President.

AUGUST 14, 1872.

S. S. Riker, Esq., president Wash. & Geo'town R. R. Co.

SIR: The contractor for grading and paving Pennsylvania avenue east has called this morning and informed us that he is de-
42 layed in his work by your not moving your tracks. Will you please inform us at once your determination in the matter?

Yours respectfully, JAMES A. MAGRUDER,
Treasurer Board of Public Works.

AUGUST 15, 1872.

S. S. Riker, Esq., president W. & G. R. R. Co., Washington, D. C.

SIR: I wrote you yesterday in relation to your track on Pennsylvania avenue east, and wished to know your determination at once. In our conversation to-day I gave you the views of this Board. I must again ask that you give your decision at once. This trifling does not amount to anything, and if you do not let us know by to-morrow at 10 o'clock a. m. I shall give orders to the contractor for improving the above-named avenue to proceed with the grading.

Yours respectfully, JAMES A. MAGRUDER,
Treasurer Board of Public Works.

AUGUST 22, 1872.

S. S. Riker, Esq., president W. & G. R. R. Co.

SIR: Your communication of this date is at hand. Please put down your track at once, as far as torn up, as the contractors are clamorous and claim damages for time lost. Attend to this at once and confer with your counsel afterwards.

By order of the Board:

CHARLES S. JOHNSON,
Ass't Secretary.

APRIL 14, 1873.

S. S. Riker, Esq., president W. & G. R. R. Co., Washington, D. C.

SIR: The Board of Public Works desire to have the streets
43 and avenues of Washington and Georgetown in as good condition as is possible. Allow me, therefore, to call your attention most respectfully to the provision of the act of Congress incorporating the Washington & Georgetown R. R. Company which required it to keep its track and two feet beyond the outer rails thereof well paved and in good order. From an inspection of the tracks of the roads it appears that in many places the space between the rails, as well as outside of them, is not in the condition contemplated by the law. Will you please have the defects promptly corrected?

Very respectfully, ALEX. R. SHEPHERD,
Vice-President.

AUGUST 30, 1873.

S. S. Riker, Esq., president W. & G. R. R. Co., Washington, D. C.

SIR: As it is necessary to lower the gas-mains at the intersection of First street east and Pennsylvania avenue, you will please make such arrangements as may be necessary, either by the construction of a bridge or otherwise, as will not interfere with the progress of the work.

By order of the Board:

CHARLES S. JOHNSON,
Assistant Secretary.

SEPTEMBER 20, 1873.

S. S. Riker, Esq., president W. & G. R. R. Co., Washington, D. C.

SIR: I am directed by the Board to notify you to hurry up the work on your road in south B street, in order that the paving of said street may not be delayed.

Very respectfully, CHARLES S. JOHNSON,
Secretary.

SEPTEMBER 23, 1873.

S. S. Riker, Esq., president Washington & Georgetown R. R. Co.

SIR: I am directed by the Board to notify you that you must
44 make preparations for the removal of your railroad tracks on Pennsylvania avenue, between First and Second streets

east, at once. One side of the railway is already graded, and the contractor will immediately commence upon the grading of the remainder, and prompt action upon your part is especially desired.

Very respectfully, CHARLES S. JOHNSON,
Secretary.

OCTOBER 28, 1873.

S. S. Riker, Esq., president W. & G. R. R. Co., Washington, D. C.

SIR: You are respectfully requested to remove at once the track at the intersection of B street north and Delaware avenue, that the contractor may finish the concrete pavement at that point before the winter sets in.

By order of the Board:

CHARLES S. JOHNSON, *Secretary.*

NOVEMBER 15, 1873.

S. S. Riker, Esq., president W. & G. R. R. Co., Washington, D. C.

SIR: I am directed by the Board to inform you that the First National Bank of the City of New York, as the holder of certificate of assessment No. 3378 against the bed or track of the Washington & Georgetown R. R. Company, and embracing part of the roadway of 7th street west, between the Potomac river and B street north, issued August 15, 1872, for $7,068; certificate No. 3379 against said company, on and embracing part of the roadway of 14th street west, between H and N streets north, issued August 23, 1872, for $4,103.30; certificate No. 3380 against said company, on and embracing part of the roadway of New York avenue, between 9th and 15th streets northwest, issued September 2, 1872, I think it is for $716.80; certificate No. 3381 against said company, on and embracing part of the roadway of Pennsylvania avenue, between 15th street west and Rock creek, issued September 26, 1872, for $11,842.60, has requested a sale of the property against which such certificates have been
45 issued, and to say that the board has accordingly adopted a resolution authorizing the advertisement and sale after the 20th instant, unless the amount due is paid on or before that date. It is hoped that the amount will be adjusted without requiring the board to advertise the property for sale.

Very respectfully, CHARLES S. JOHNSON,
Secretary.

NOVEMBER 20, 1873.

S. S. Riker, Esq., president W. & G. R. R. Co., Washington, D. C.

SIR: You are hereby requested to lower the tracks on 7th street, between M and Q streets northwest, so that the paving can be laid at once.

By order of the Board:

CHARLES S. JOHNSON, *Secretary.*

MAY 20, 1873.

S. S. Riker, Esq., president W. & G. R. R. Co., Washington, D. C.

SIR: I am directed by the Board to notify you that orders have

been issued to grade 7th street northwest, from New York avenue to I street, and to request that you will cause the tracks of your railroad to be changed to conform with the new grade.

Very respectfully, CHARLES S. JOHNSON,
Ass't Secretary.

DECEMBER 15, 1873.

S. S. Riker, Esq., president W. & G. R. R. Co., Washington, D. C.

SIR: I am directed to call your attention to the bad condition of the wooden pavement on Bridge street, Georgetown, at the terminus of the railroad, caused by the watering of the company's horses at that point. It is the desire of the Board that you will cause the same to be repaired.

Very respectfully, CHARLES S. JOHNSON,
Secretary.

46 JUNE 25, 1873.

S. S. Riker, Esq., President W. & G. R. R. Co., Washington, D. C.

SIR: The exigencies of the case require the suspension of travel on 7th street, from E to G streets northwest, until the grading of that street, now going on, shall be completed. There is great danger of accident whereby the lives of your passengers may be sacrificed, and the work can be done in one-half of the time if the travel of your cars is checked.

You will please order the suspension forthwith, as after the delivery of this communication the responsibility for accidents will rest with you.

Very respectfully,
ALEX. R. SHEPHERD.

NOVEMBER 8, 1872.

Henry Hurt, Esq., Secretary of the W. & G. R. R. Co., No. 202 New Jersey avenue, Washington, D. C.

SIR: Referring to your letter of the 7th instant, permission is hereby granted the Washington & Georgetown R. R. Company to take up so much of the wooden pavement on Pa. avenue as may be necessary for them to make connection with their main line at the foot of Capitol, provided the same is done under the supervision of W. F. Wallace, inspector, and that the wooden pavement is laid by Lewis Clephane, the original contractor, in a good, substantial, manner, at the expense of said railroad company.

By order of the Board:
CHARLES S. JOHNSON,
Ass't Secretary.

DECEMBER 18, 1871.

S. S. Riker, Esq., President W. & G. R. R. Co., Washington, D. C.

DEAR SIR: Mr. Filbert, the bearer, has the contract for laying a wood pavement in front of the market building on Seventh street,

between Pennsylvania avenue and B street north. Your track will have to be raised to conform to grade of street. Please have it done at once, and let the good work go on.

Truly yours,

A. R. SHEPHERD, *V.-P.*

47 DECEMBER 18, 1871.

S. S. Riker, Esq., President W. & G. R. R. Co., Washington, D. C.

SIR: I am instructed by the Board of Public Works to request you to have the railroad tracks on Seventh street south raised to the established grade, so as to facilitate the work of improvement now going on upon said street.

Very respectfully,

CHARLES S. JOHNSON,
Ass't Secretary.

AUGUST 29, 1872.

Board of Public Works.

GENTLEMEN: The enclosed bills of the Washington & Georgetown R. R. Co. having been returned to this office with the request that a certificate be given as to the same being correct, and not knowing anything as to the items that go to make the assessments, the bills are respectfully referred to the Board for their action.

(Signed) GEORGE W. BEALL,
Sup't of Assessments.

JUNE 18, 1873.

Washington & Georgetown R. R. Co.

GENTLEMEN: You will at once lower your track on Eighth street to the proper grade. The work of improving the street is at a standstill, awaiting your action.

Respectfully yours,

(Signed) R. C. PHILLIPS,
Chief Engineer.

JULY 8TH, 1873.

Washington & Georgetown R. R. Co.

GENTLEMEN: You will please remove your tracks on Pennsylvania avenue, from First street east to Sixth street east, into new roadway as soon as possible, in order that the work may be completed at once.

Respectfully yours,

(Signed) R. C. PHILLIPS,
Chief Engineer.

48 JANUARY 5, 1874.

S. S. Riker, Esq., president W. & G. R. R. Co., Washington, D. C.

SIR: I am directed by the Board to request that you will pave between the tracks of your road on Fourteenth street, between N and New York avenue and H streets northwest, and clean up the

rubbish left on the part of Pennsylvania avenue east of the Capitol at once.

Very respectfully,

CHARLES S. JOHNSON, *Secretary.*

The plaintiff then called as a witness the superintendent of the defendant, and by him gave evidence tending to prove that he was such superintendent during the years 1871, 1872, 1873, and 1874, and that when the pavements mentioned in the declaration were laid along the line of the railroad of the defendant in the streets and avenues mentioned in the declaration he knew of the laying of such pavements, and that the cars of the defendant, in charge of its conductors and drivers, were running along and over the said streets and avenues before and during the progress of said work, and that the grade of defendant's railroad was from time to time by it changed and altered, as occasion required, during the progress of said work, so as to conform to the grade established by the plaiutiff, and the space between the exterior rail sof the defendant's railroad was, when the grade was changed, paved by it while the plaintiff was improving the streets and avenues mentioned in the declaration.

And thereupon the plaintiff rested its case.

The defendant then moved the court to instruct the jury that the plaintiff was not entitled to recover; which motion was overruled by the court, and the defendant excepted.

And thereupon the defendant gave evidence tending to
49 prove that at and before the times when the said pavements, for the cost whereof in part this action is brought, were respectively ordered and directed to be laid as aforesaid the whole space within the exterior rails of the defendant's railroad and for two feet beyond each side of said rails, being the space mentioned in section four of the charter, was, in fact, well paved and in good order and condition, and that the said space had been paved by the defendant at its expense when it constructed its railroad, and up to the time of the laying by the plaintiff of the pavement in respect of which recovery is sought in this action had been kept, at its expense, in good order and condition.

And the defendant further, against the timely objection of the plaintiff, offered and gave evidence tending to show that the Board of Public Works, in the construction of the powers delegated to it by law, claimed and insisted, as was known to the defendant, that the power and duty was devolved exclusively on it of paving the avenues and streets from curb to curb, including the space within the exterior rails of the defendant's railroad and for two feet outside of said exterior rails, and in making the aforesaid awards and contracts, and in the execution of the work thereunder, acted in pursuance of such claim; and hence did not make any request of or demand upon the defendant to do the work, whereof the costs are claimed in the declaration, other than as hereinbefore appears from the evidence given by the plaintiff.

And on cross-examination of A. B. Mullett, a witness called on

behalf of the defendant, he testified that he was a practical engineer and a member of the Board of Public Works at the time of the doing of work sued for in this action, and that it was impracticable to divide the work of paving the spaces included between the concrete lines of the streets and avenues mentioned in the declaration and the outer rails of defendant's tracks in said streets and avenues so as to enable the plaintiff to do the said work up to the
50 imaginary line, two feet outside of and exterior to the defendant's said tracks, and to enable the defendant to do the work of paving the space between said imaginary lines and defendant's said outer rails.

And on cross-examination of Lewis Clephane, a witness called on behalf of the defendant, he testified that in the year 1870, he, as contractor, was paving Pennsylvania avenue, in the city of Washington, D. C., from First to Fifteenth streets northwest, with wooden pavement, under a contract with the United States of America, and was also employed by the defendant, and paid by it, at the same time, to pave the space along two feet outside of the outer rail of the defendant's track with the same kind of pavement with which he was paving the rest of said avenue under contract with the United States as aforesaid, and that the said claim on the part of the Board as to the space between the exterior rails of the defendant's railroad was enjoined by the supreme court of the District of Columbia, at the suit of the defendant, by writ of injunction, but continued to be enforced and executed as to the two feet beyond the said exterior rails, in respect of which such injunction was not asked for by defendant.

The defendant further gave evidence tending to show that it never received any request or demand on the part of the plaintiff, nor had any opportunity afforded to do the said work, or any part thereof, otherwise than may appear as aforesaid; that the prices paid by the plaintiff for the said work were grossly excessive and exorbitant, being in some instances more than fifty per cent. in excess of the reasonable price; that the said contracts were awarded without public advertisement or other notice; that the prices in the said contracts were generally fixed according to a scale of prices established by the said Board upon bids and proposals for such
51 work received by said Board in response to public advertisement therefor soon after it entered upon its official duties and before any contracts were made, but that the Board deviated from time to time from such scale, and that the same was established after advertisement in a single paper only, published in the city of Washington, calling for the rates at which bidders would lay the different pavements, but not giving or proposing to give the work to such bidders; and that the said rates were extravagantly high because of the low credit of the plaintiff and the uncertainty of payment; and that the pavements proposed to be laid by the Board when it so advertised were such as had never before, or only in two or three instances, been laid in the District of Columbia.

The defendant further, and against the timely objection of the plaintiff, gave evidence tending to prove that the pavements, whereof

the costs in part are claimed in the declaration, were wholly unsuitable for the purpose, and that such as were of wood soon rotted away, and that in a short time it became necessary to replace all the said pavements, or most of them, with others.

And thereupon the defendant rested its case.

After the evidence was closed, the defendant moved the court for leave to reinstate the pleas of limitations which upon demurrer had been overruled; but the said motion was overruled, and the defendant excepted.

And thereupon the plaintiff severally prayed the court to grant each of the following instructions:

1. The defendant is bound by its act of incorporation, as set out in the declaration, to change the grade of its road and to conform its tracks to such changed grade, and also to lay new pave-
52 ments within the prescribed spaces whenever the plaintiff, in its discretion, sees fit to make changes in the streets and avenues mentioned in the declaration in which the defendant's tracks lie, rendering such work necessary and proper to be done on the part of the defendant. The obligation in this respect imposed by its act of incorporation upon the defendant is well defined and set forth in terms which are part of the act granting its franchises, and, whenever occasion for meeting that obligation arises, the terms of its act of incorporation of themselves make it incumbent upon the defendant to discharge such obligation.

2. By the provisions of its act of incorporation the defendant was bound, whenever occasion arose, to pave the prescribed spaces in the streets and avenues mentioned in the declaration, and such obligation was independent of any formal application or notification so to do on the part of the plaintiff or its predecessors in authority.

3. In order to entitle the plaintiff to recover in this action it is not necessary that it must appear from the evidence that before doing the work in respect of which the action is brought the plaintiff or its predecessors gave the defendant formal notice and made formal demand upon it to do the work. It is sufficient, in that respect, if it appear from the evidence that by proper regulation, order, or direction the improvement of the streets and avenues mentioned in the declaration was authorized, entered upon, and carried into effect by the proper authorities. Upon such authorization and entry upon such improvement, and knowledge by the defendant thereof, it was the duty of the defendant, without further notice or demand, to pave the prescribed spaces in accordance with the plans and requirements of the appropriate authorities; and on failure so to do those authorities might do the work and have recourse over against the defendant for the reasonable costs and expenses incurred by them in properly doing the same.

53 4. Even though, in order to render it liable in this action, the defendant were entitled to notice itself to do the work, before the doing of the work by the plaintiff or its predecessors, the authorization and entry upon the work by the plaintiff or its predecessors, as above assumed, correspondence and conference between

the plaintiff or its predecessors and the defendant on the subject, actual knowledge by the defendant of the contemplated work, adaptation of its tracks to the change of grade necessary for the work, and the paving by the defendant of the space between its tracks before or pending the work, would constitute such notice to the defendant in the premises.

5. The jury must find for the plaintiff, if at all, at the rates shown by the evidence actually to have been paid by the plaintiff or its predecessors for the work described in the declaration, unless the jury find from the evidence that such rates were, under all the circumstances, unreasonable, and the burden of proving unreasonableness in such rates is upon the defendant.

6. What were reasonable costs and expenses incurred by the plaintiff for doing the work described in the declaration must be determined from all the circumstances of the case. It was not incumbent upon the plaintiff or its predecessors to do the work by its or their own officers and employees; but the plaintiff, or its predecessors, properly might procure the work to be done by contract, and the reasonable charges of those doing the work under such contract with the plaintiff, or its predecessors, may be recovered in this action.

7. The plaintiff is not restricted in this action to recover merely of what it would have cost the defendant to do the designated work. The plaintiff is entitled to recover the reasonable expense to it, or its predecessors, of doing the work, due regard being had to all the circumstances of the case, including the character, situation,
54 instrumentalities, and advantages, or want of advantages, of the plaintiff, or its predecessors, in that behalf.

8. If the jury find from the evidence that at or about the time of doing the work described in the declaration the defendant, by agreement, paid at a certain rate for similar work done in a manner and by means and instrumentalities similar to those shown by the evidence to have been employed by the plaintiff, or its predecessors, in the premises, the jury must consider such rate so paid by the defendant not unreasonable.

9. If the defendant, neglecting and failing to pave the prescribed spaces, as required by its act of incorporation, stood by and without protest or other objection permitted the plaintiff, or its predecessors, to do the work described in the declaration, the defendant is estopped to complain that it was not notified or called upon to do the work in question before it was done by the plaintiff or its predecessors.

10. The jury is at liberty in their verdict to allow interest from the time of demand by the plaintiff, as shown in the evidence, upon the sum they may find was the reasonable value of the several items of work enumerated in the declaration.

And thereupon the defendant severally prayed the court to grant each of the following instructions:

First. The duty imposed upon the defendant by its charter was to change the locality of its railroad so as to conform to changes which might be made in the grades or otherwise in the streets and

avenues; and, further, to keep the space embraced within two lines drawn two feet from the outer rails of its tracks and running parallel with the said tracks at all times well paved and in good order, without expense to the United States or the cities of Washington and Georgetown. The measure of the said duty in
55 relation to keeping the said space at all times well paved and in good order, and the manner of performing the same, depended upon the law of the land, and not upon the discretion or judgment of the plaintiff, and the said duty was owing and to be performed by the defendant; and if from the whole evidence the jury shall find that the defendant did change the locality of its railroad as required, and did keep the space above mentioned at all times well paved and in good order, and that, notwithstanding the fact that the said space was so kept at all times well paved and in good order, the plaintiff did the work within the said two feet, for the cost whereof this action is brought, then the plaintiff is not entitled to recover.

Second. If the jury shall find from the whole evidence that before and at the time the work was done, the cost whereof is sought to be recovered in this action, the space of two feet beyond the outer rails of the track of the plaintiff was well paved and in good order, and that the said work, the cost whereof is sought to be recovered in this action, was done by the plaintiff exclusively within said two feet, then the plaintiff is not entitled to recover in this action.

Third. If from the whole evidence aforesaid the jury shall find that the pavements, for the cost of two feet whereof this action is brought, were entirely new, then the plaintiff is not entitled to recover, as the duty of the defendant did not extend beyond repairs.

Fourth. Under the true construction of the charter of the defendant the duty to keep at all times well paved and in good order the space between the outer rails, and for two feet beyond, did not require the defendant to lay down new pavements, but was confined to keeping at all times well paved and in good order such pavements as were or might be laid in said space by competent authority.

56 Fifth. If the jury shall find from the evidence that, at the time the plaintiff began the various pieces of work charged for in this cause, the tracks of the defendant and the space of two feet beyond the outer rails thereof, and also the space between the tracks, were well paved and in good order, the defendant was bound by law to change said railroad, from time to time, so as to conform to the grade and pavement made by the plaintiff, and to do nothing more, except thereafter to keep the said parts and portions of the streets well paved and in good order.

Sixth. Any right on the part of the plaintiff to discharge the duty of keeping well paved and in good order the space between the outer rails and two feet beyond depended upon the default of the defendant to discharge such duty. The performance of such duty belonged primarily to the defendant, and the burthen of proof is upon the plaintiff to show default on the part of the defendant.

Seventh. The court is requested to instruct the jury that the act

of the Legislative Assembly of the 10th of August, 1871, entitled, etc., and given in evidence, did not impose the duty upon the defendant to do the work for which recovery is sought, nor did any other law impose such duty, nor any facts in evidence, if found by the jury, could involve such duty.

Eighth. The passage of the act of the Legislative Assembly given in evidence, and the adoption of the comprehensive plan therein referred to, did not make it the duty of the defendant to do the work for which a recovery is sought in this action.

Ninth. The orders or awards of the Board of Public Works awarding contracts for doing the work, for part of which a recovery is sought, did not make it the duty of the defendant to do such work.

57 Tenth. Nor did the passage of the act of the Legislative Assembly mentioned in the eighth prayer, and the orders or awards mentioned in the ninth prayer, even if known to the defendant, and followed by knowledge that contracts had been made by the Board of Public Works for the pavements, the cost for a portion whereof is sought to be recovered in this action, and that said contracts were in course of execution by the performance of the work therein provided for, make it the duty of the defendant to do the work, unless the defendant had knowledge or reason to believe that the plaintiff acted not under a claim of right on its part, but a claim based on notice and refusal or neglect.

Eleventh. Even if the duty of the defendant, in respect of keeping well paved and in good order the space between the outer rails of its tracks, and for two feet beyond, was not to be governed in its exercise by the law of the land, but by the discretion of the plaintiff, so that the defendant was bound, not only to keep the said space well paved and in good order, but so to keep the same as prescribed by the plaintiff, still the right to do the work in the manner prescribed by the plaintiff belonged to the defendant, and it was not competent for the plaintiff to do the said work except upon notice to the defendant and its refusal or neglect to do the same; and if the said work, or any part thereof, whereof the cost is sought in this action, was not done after such notice to the defendant and its refusal or neglect, then for the cost of such work, or part thereof, the plaintiff is not entitled to recover.

Twelfth. The plaintiff could not in law become the creditor of the defendant in respect of any work, the doing whereof was by law devolved upon the defendant, without notice to the defendant to do the same, followed by refusal or neglect; and the jury are instructed that, unless they find from the evidence that such notice was given and followed by refusal or neglect, the plaintiff is not entitled to recover.

58 Thirteenth. The plaintiff could not in law become the creditor of the defendant in respect of any work, the doing whereof was by law devolved upon the defendant, without affording a reasonable opportunity to the defendant to do such work; and the jury are instructed that, unless they find from the evidence that such opportunity was afforded, the plaintiff is not entitled to recover.

Fourteenth. If from the evidence the jury shall find that the plaintiff or the Board of Public Works, in the interpretation of the powers granted to them by law, claimed the right to pave the streets and avenues from curb to curb, and denied that to the defendant belonged the duty and correlative right to pave the space between the outer rails of its tracks, and for two feet beyond, and that under and in pursuance of such interpretation the work, for the cost whereof this action is brought, or any part of such work, was done without notice to the defendant, or any refusal or failure on its part in pursuance of such notice, and without any opportunity being afforded to the defendant to do said work, then the said interpretation was erroneous, and no right of action accrued to recover from the defendant money expended for work done as aforesaid, notwithstanding the failure to give such notice or afford such opportunity was owing to mistake of law.

Fifteenth. The two ordinances of the corporation of Washington given in evidence expressly impose the cost of the work on 14th street west, between H street north and N street north, and between the latter street and Boundary, and on 7th street west, between B street south and the Potomac river, for part of the cost of which work this action is brought, upon the owners of property abutting upon the said streets; and if the jury shall find that under and in pursuance of the said ordinances contracts were made for the said work in behalf of the said corporation, and the said work, or
59 any part thereof, was done under said contracts, and no part of the cost thereof charged against the defendant, but the whole cost or the portion thereof not paid by the plaintiff was assessed to the said owners of property, as aforesaid, then the said assessment was ratified by law, and especially by the acts of the 19th of June, 1878, and the 27th of June, 1879, and the provisions of said laws whereby remissions to the said owners of property were allowed did not authorize the remissions, or any part thereof, to be charged against the defendant, and this action cannot be maintained for the said remissions, or any part thereof, nor for the part of the said work, if any, which the said corporation might have notified the defendant to do, but the cost whereof, whether owing to the pavement being a new pavement, or error of law, it imposed upon the said owners.

Sixteenth. The acts of June 19, 1878, and June 27, 1879, authorizing the revision of assessments and the issue of drawback certificates at the instance of the parties mentioned in the said acts, ratified and confirmed the assessments as made, subject only to the relief which was provided for by the said acts in behalf of the said parties. The said acts did not authorize any revision except at the instance and for the benefit of the said parties, nor the imposition upon the defendant of any amounts remitted, and for which drawback certificates issued, nor did the said acts give any right of action against the defendant which would not have existed had they simply ratified and confirmed the assessments as made.

Seventeenth. If from the evidence the jury shall find that certain items of charge alleged in the declaration were assessed by the

plaintiff against the defendant, and that the certificates of indebtedness given in evidence were issued by the plaintiff against the railroad of the defendant, and were sold for value by the plaintiff to the First National Bank of New York at or about the time
60 mentioned by the witness Roome, and that the said certificates, amounting in the aggregate to $34,202.80, are still outstanding, then for the said items of charge the plaintiff is not entitled to recover in this action.

Eighteenth. The plaintiff was not legally entitled to do the work, the cost whereof is sought to be recovered in this action, primarily, but only in the event of default on the part of the defendant; and as there is no evidence to show that such default was communicated to the plaintiff, and that thereupon the plaintiff ordered or directed the said work to be done in consequence of such default, this action cannot be maintained, and the jury must find for the defendant.

Nineteenth. The plaintiff is not entitled to recover in this action except for money paid, laid out, and expended by it in consequence of the default of the defendant.

Twentieth. The plaintiff did not succeed to the interests of the cities of Washington and Georgetown in the performance of the duty imposed upon the defendant to keep at all times well paved and in good order the space between the outer rails of its tracks and for two feet beyond; and hence the plaintiff cannot recover.

Twenty-first. If it be assumed that the plaintiff succeeded to the interests of the cities of Washington and Georgetown in the performance of the duty imposed upon the defendant by its charter to keep at all times well paved and in good order the space between the outer rails of its tracks and for two feet beyond, still the government created by the act of the 21st of February, 1871, was one of plenary authority. It had the right to construe the charter duty of the defendant and the interest of the plaintiff therein, and the legislation of the plaintiff fails to show that it regarded the new pave-
61 ments authorized to be laid as within such duty, or that, if it did so regard such new pavements, it took any steps to exact the performance of such duty, or to enable the plaintiff or its agents to do the same by putting in default the defendant.

And thereupon the court severally rejected each of the prayers offered by the plaintiff, except the sixth and tenth, and severally rejected each of the prayers offered by the defendant; and thereupon the court, of its own motion, instructed the jury as follows:

First. The jury is instructed that if they find from the evidence that the municipal authorities ordered and directed that the streets and avenues named in the declaration and along and over which the tracks of the defendant's railroad are laid should be repaired and improved by laying down new pavements of wood, asphalt, and concrete, as set forth in the declaration, and that said authorities thereupon entered upon the performance of the said work; and shall further find that the defendant company had notice or knowledge that the municipal authorities had so ordered and directed and had entered upon the performance of said work, it thereupon became the duty of the defendant company, without delay, to conform its tracks

to the grade of the new work, and to pave its tracks and the space between the same, and also to pave the space of two feet on each side of its outer rails, to conform to the plan and character of the pavement then being laid in said streets and avenues, respectively, by the municipal authorities; and if the jury shall further find that the defendant company neglected to pave the space of two feet on each side of its outer rails, and that the municipal authorities thereupon paved the said space of two feet on the streets and avenues, as described in the declaration, and paid the cost of paving the same, then the plaintiff is entitled to recover in this action
62 against the defendant such sum as the jury shall believe was the reasonable cost of performing the said work at the time it was done.

Second. The jury is instructed that in determining whether the defendant company had notice or knowledge that the municipal authorities had directed and ordered that new pavements should be laid on the said streets and avenues, and had entered upon the performance of the said work, they are authorized to consider the testimony to the effect that the defendant changed the grades of its track so as to conform to the grades of the new pavement; that its cars were running along the side streets and avenues while the work was progressing; and that the defendant obtained an injunction to prevent the paving of the spaces between its tracks, while the rest of the streets and avenues were being paved—with the other testimony in the case.

Third. The municipal authorities were under no obligation to notify the defendant company that it was expected to pave the space of two feet outside of its outer rails, or to demand that the defendant should perform the said work.

As soon as the defendant had notice or knowledge that the municipal authorities had ordered and directed new pavements to be laid in said streets and avenues, and that they were commencing the work, it forthwith became the duty of the defendant to offer itself ready to do said paving, and to proceed to do the same, in such manner as to conform to the altered grade and character of the new pavements then being laid by the municipal authorities; and in the absence of such offer, and upon the neglect of the company to commence the work, it became the duty of the plaintiff to perform the same at the reasonable cost of the defendant.

Fourth. In determining the sum to be allowed for the paving of the space of two feet along the outer rails of the defendant's
63 track, the jury should take into consideration all the circumstances disclosed by the testimony tending to show what would have been reasonable rates for such work at the time it was performed, and, among others, the testimony as to the rates for such work actually paid about that time by employers, including the defendant and the plaintiff. And if the jury shall believe from all the evidence that the rates charged against the plaintiff for this work, and actually paid for it, were reasonable under the circumstances, then the plaintiff is entitled to a recovery for the sums so paid, and the defendant is entitled to a deduction from such sums, if the jury

shall find said charges were not reasonable, to the extent of what they may find excessive.

Fifth. Notwithstanding the jury may find that the pavements selected by the municipal authorities and charged for in this action were unwisely selected and soon perished or became unserviceable, the plaintiff will still be entitled to recover for what the said work was reasonably worth at the time it was performed.

And thereupon to the several rulings of the court in granting each of the sixth and tenth prayers offered by the plaintiff, and to the several rulings of the court in rejecting each of the prayers offered by the defendant, and to the several instructions given by the court of its own motion, the defendant severally excepted.

And thereupon the defendant, after the ruling of the court upon the prayers submitted in behalf of the plaintiff and defendant, prayed the court to qualify the instructions given by the court by adding thereto that if the jury shall find that the Board of Public Works asserted the exclusive right to do the whole paving from curb to curb, and would not have allowed the defendant to do the work which, as alleged, devolved on the defendant, and that the defendant had knowledge or notice of the same, then it was not incumbent upon the defendant to offer to do the said work.

64 Which prayer the court refused to grant, and to such refusal the defendant excepted.

And thereupon, before the jury retired, the defendant prayed the court to sign and seal this bill of exceptions, and that the same should have the same force and effect as if the several rulings therein excepted to had been incorporated in separate bills of exception, which is allowed; and this bill is accordingly, before the jury retired, signed and sealed this eighth day of April, A. D. 1884.

Now for then, May 9, 1885.

A. B. HAGNER. [SEAL.]

EXHIBITS TO BILL OF EXCEPTIONS.

EXHIBIT A.

Charter. Filed May 9, 1885. *R. J. Meigs, Clerk.*

DISTRICT OF COLUMBIA
vs.
WASHINGTON AND GEORGETOWN RAILROAD COMPANY. } At Law. No. 22457.

An act to incorporate the Washington and Georgetown Railroad Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Eliab Kingman, Franklin Tenney, J. J. Coombs, Sayles J. Bowen, Charles H. Upton, Henry Addison, Hallet Kilbourn, and their associates and assigns, be, and they are hereby, created a body corporate,

65 under the name of the "Washington and Georgetown Railroad Company," with authority to construct and lay down a

double-track railway, with the necessary switches and turnouts, in the cities of Georgetown and Washington, in the District of Columbia, through and along the following avenues and streets: Commencing on Bridge street, at the intersection with High street, or at such point on said Bridge street east thereof, in the city of Georgetown, as may be designated hereafter by the corporate authorities thereof; along said Bridge street to its intersection with the street running to the tubular bridge over Rock creek to Pennsylvania avenue, in the city of Washington; along said avenue to Fifteenth street west; along said street south to said avenue; along said avenue to the foot of the Capitol grounds; thence around the southern boundary of the Capitol grounds, and along their southern boundary easterly to Pennsylvania avenue; along said Pennsylvania avenue to Eighth street east, or Garrison street, and along said street south to the Navy Yard gate, with a lateral road running along the eastern front of the Capitol from the southern to the northern gate, and thence by "A" street to the depot of the Baltimore and Ohio railroad, and thence from said depot through First street west to Pennsylvania avenue, so as to intersect with said main road; also a double or single track branch railway, commencing at Boundary street north and running down Seventh street west to Pennsylvania avenue and to the Potomac; also a railway commencing at Boundary street and running down Fourteenth street west and New York avenue to Pennsylvania avenue, to a point of intersection with said first-mentioned railway, with the right to run public carriages thereon drawn by horse-power, receiving therefor a rate of fare not exceeding five cents a passenger for any distance between the termini of either of the said main railway, or between the termini of either of said branch railways, or between either terminus of said main railway and the terminus of either of said branch railways: Provided, That the use and maintenance of said road shall be subject to the municipal regulations of the cities of Washington and Georgetown, respectively, within their several corporate limits; and that whenever the Capitol grounds shall be enlarged, then the said routes shall be made to conform thereto.

SEC. 2. And be it further enacted, That said roads shall be deemed real estate, and they, together with other real property and the personal property of said body corporate, shall be liable to taxation as other real estate and personal property in the cities aforesaid, except as hereinafter provided.

SEC. 3. And be it further enacted, That the said railway shall be laid in the centre of the avenues and streets, as near as may be without interfering with or passing over the water or gas pipes, in the most approved manner adapted for street railways, with rails of the most approved patterns, to be determined by the Secretary of the Interior, laid upon an even surface with the pavement of the streets; and the space between the two tracks shall not be less than four feet nor more than six feet, and the carriages shall not be less than six feet in width, the gauge to correspond with that of the Baltimore and Ohio railroad.

SEC. 4. And be it further enacted, That the said corporation, hereby

created, shall be bound to keep said tracks, and for the space of two feet beyond the outer rail thereof, and also the space between the tracks, at all times well paved and in good order, without expense to the United States or to the cities of Georgetown and Washington.

SEC. 5. And be it further enacted, That nothing in this act shall prevent the Government, at any time, at their option, from altering the grade or otherwise improving Pennsylvania avenue, and such other avenues and streets as may be occupied by said roads, or the cities of Washington and Georgetown from so altering or improving such streets and avenues as may be under their respective authority and control, and in such event it shall be the duty of said company to change their said railroad so as to conform to such altered grade and pavements.

SEC. 6. And be it further enacted, That this act may at any time be altered, amended, or repealed by the Congress of the United States.

SEC. 7. And be it further enacted, That nothing in this act shall be so construed as to authorize said body corporate to issue any note, token, device, scrip, or other evidence of debt to be used as a currency.

SEC. 8. And be it further enacted, That the capital stock of said company shall be not less than three nor more than five hundred thousand dollars, and that the stock shall be divided into shares of fifty dollars each, and shall be deemed personal property, transferable in such manner as the by-laws of said company may direct.

SEC. 9. And be it further enacted, That the said company
67 shall place first-class cars on said railways, with all the modern improvements for the convenience and comfort of passengers, and shall run cars thereon during the day as often as every five minutes, except as to Seventh and Fourteenth streets, and on these once in fifteen minutes each way, and until twelve o'clock at night as often as every half-hour, and throughout day and night as much oftener as public convenience may require.

SEC. 10. And be it further enacted, That said company shall procure such passenger-rooms, ticket offices, stables, and depots at such points as the business of the railroad and the convenience of the public may require; and the said company is hereby authorized to lay such rails through transverse or other streets as may be necessary for the exclusive purpose of connecting the said stables and depots with the main tracks, and the said company is hereby authorized to purchase or lease such lands or buildings as may be necessary for the passenger-rooms, ticket offices, stables, and depots above mentioned.

SEC. 11. And be it further enacted, That all articles of value that may be inadvertently left in any of the cars or other vehicles of the said company shall be taken to their principal depot and entered in a book of record of unclaimed goods, which book shall be open to the inspection of the public at all reasonable hours of business.

SEC. 12. And be it further enacted, That said corporation shall, on demand of the President of the United States, Secretary of War, or Secretary of the Navy, cause to be transported over said railway any freight cars laden with freight for the use of the United States.

The officers causing such service to be done shall pay a reasonable compensation therefor.

SEC. 13. And be it further enacted, That within five days after the passage of this act the corporators named in the first section, or majority of them, or if any refuse or neglect to act, then a majority of the remainder, shall cause books of subscription to the capital stock of said company to be opened and kept open, in some convenient and accessible place in the city of Washington, from nine o'clock in the forenoon till five o'clock in the afternoon, for a period to be fixed by said corporators, not less than two days; and said corporators shall give public notice, by advertisement in the daily
68 papers published in the city of Washington, of the time when and the place where said books shall be opened, and subscribers upon said books to the capital stock of the company shall be held to be stockholders: Provided, That every subscriber shall pay at the time of subscribing twenty-five per centum of the amount by him subscribed to the treasurer appointed by the corporators, or his subscription shall be null and void. If at the end of two days a larger amount than the capital stock of said company shall have been subscribed, the books shall be closed, and the said corporators named in the first section shall forthwith proceed to apportion said capital stock among the subscribers *pro rata*, and make public proclamation of the number of shares allotted to each, which shall be done and completed on the same day that the books are closed: Provided, further, That nothing shall be received in payment of the twenty-five per centum at the time of subscribing except money or checks or certificates of deposit endorsed "good" by the president or cashier of some good solvent bank or banks. And when the books of subscription to the capital stock of said company shall be closed the corporators named in the first section, or a majority of them, and in case any of them refuse or neglect to act, then a majority of the remainder, shall, within twenty days thereafter, call the first meeting of the stockholders of said company, to meet within ten days thereafter, for the choice of directors, of which public notice shall be given for five days in two public newspapers, published daily in the city of Washington, or by written personal notice to each stockholder by the clerk of the corporation; and in all meetings of the stockholders each share shall entitle the holder to one vote, to be given in person or by proxy.

SEC. 14. And be it further enacted, That the government and direction of the affairs of the company shall be vested in the board of directors, seven in number, who shall be stockholders, and who shall hold their office for one year and till others are duly elected and qualified to take their places as directors; and the said directors (a majority of whom, the president being one, shall be a quorum) shall elect one of their number to be president of the board, who shall also be president of the company; and they shall also choose a treasurer, who shall give bonds with surety to said company, in such sum as the said directors may require, for the faithful discharge of his trust. In case of a vacancy in the board of directors
69 by the death, resignation, or otherwise, of any director, the

vacancy occasioned thereby shall be filled by the remaining directors.

SEC. 15. And be it further enacted, That the directors shall have full power to make and prescribe such by-laws, rules, and regulations as they shall deem needful and proper touching the disposition and management of the stock, property, estate, and effects of the company, not contrary to the charter or to the laws of the United States and the ordinances of the cities of Washington and Georgetown.

SEC. 16. And be it further enacted, That there shall be an annual meeting of the stockholders for the choice of directors, to be holden at such time and place, under such conditions, and upon such notice as the said company in their by-laws may prescribe; and said directors shall annually make a report in writing of their doings to the stockholders and to Congress.

SEC. 17. And be it further enacted, That the mayor, common council, and the several officers of the corporations of the cities of Georgetown and Washington, and the said corporations are hereby prohibited from doing any act or thing to hinder, delay, or obstruct the construction or operation of said railroad, as herein authorized.

SEC. 18. And be it further enacted, That the said company shall have at all times the free and uninterrupted use of their roadway; and if any person or persons shall wilfully and unnecessarily obstruct or impede the passage on or over said railway, or any part thereof, or shall injure or destroy the cars, depot stations, or any property belonging to said railway company, the person or persons so offending shall forfeit and pay, for every such offence, the sum of five dollars to said company, and shall remain liable, in addition to said penalty, for any loss or damage occasioned by his, her, or their act, as aforesaid; but no suit shall be brought unless commenced within sixty days after such offence shall have been committed.

SEC. 19. And be it further enacted, That unless said corporation shall make and complete their said railways between the Capitol and Georgetown within sixty working days from and after the company shall have been organized, and from the Capitol to the Navy Yard within sixty days thereafter, and on said Seventh street, and from said Boundary street, on Fourteenth street, to the point of intersection as aforesaid, within six months from the approval of this act, then this act shall be null and void and no rights whatsoever shall be acquired under it.

SEC. 20. And be it further enacted, That all acts and parts of acts heretofore passed which are inconsistent with any of the provisions of this act are, for the purposes of this act, hereby repealed, so far as the same are inconsistent herewith.

Approved May 17, 1862.

Stats. Lar., 12, ch. 73, p. 388.

EXHIBIT B. Filed May 9, 1885. R. J. Meigs, Clerk.

DISTRICT OF COLUMBIA
vs.
WASHINGTON & GEORGETOWN R. R. Co. } At Law. No. 22457.

An act making appropriations for improvements and repairs in the District of Columbia, and providing for the payment thereof. Approved July 10, 1871. Comprehensive plan. Letter of W. D. Cassin to Hon. A. R. Shepherd, June 1, 1871.

An act making appropriations for improvements and repairs in the District of Columbia, and providing for the payment thereof. Approved July 10, 1871.

Be it enacted by the Legislative Assembly of the District of Columbia, That the sum of four millions of dollars is hereby appropriated, until the expiration of the first fiscal quarter after the adjournment of the next regular session of the Legislative Assembly, for the improvements and repairs of the streets, avenues, alleys, and roads in the District of Columbia, and for the construction and repairs of sewers, bridges, and other public works therein, to be used and expended according to the provisions of the act of Congress of the United States, entitled "An act to provide a government for the District of Columbia," approved February twenty-one, eighteen hundred and seventy-one, and as fully as may be practicable and consistent with the public interest, in conformity with the plan of improvement submitted to said Legislature by
71 the Board of Public Works of said District, in its communication bearing date June twenty, eighteen hundred and seventy-one.

SEC. 2. And be it further enacted, That in no case shall the said board enter into a contract for any work or improvement the cost of which shall exceed the amount estimated therefor in its aforesaid plan, less twenty per centum of said estimates; and that no member of the council or house of delegates, or person holding any office of trust or profit under the District of Columbia, shall be pecuniarily interested, either directly or indirectly, in any such contract, and no payment shall be made on account of any contract in which any such person shall be so interested.

SEC. 3. And be it further enacted, That the appropriation hereby made shall be disbursed upon warrants of said board upon the treasurer of the aforesaid district, and in no other manner; and no warrant shall be drawn for any improvement or work, or under any contract therefor, unless the work done and accepted shall be at least ten per centum in excess of such warrant, except in case of final settlement.

SEC. 4. And be it further enacted, That the aforesaid four millions of dollars shall be paid out of the general improvement fund herein provided for, and be charged against the cities of Washington and Georgetown and the county of Washington in the proportion of

the improvements which shall be made therein, and that special taxes, in accordance with section thirty-seven of the organic act, shall be levied in sections, wards, or districts of Washington, Georgetown, and the county of Washington, to pay the cost of the particular local improvements which may be made therein, according to the plan of the Board of Public Works aforesaid.

SEC. 5. And be it further enacted, That to enable the Board of Public Works to commence and proceed immediately, and until the expiration of the first fiscal quarter after the adjournment of the next regular session of the Legislative Assembly, with the improvements and work hereinbefore mentioned, as hereinbefore provided, the Governor is authorized and empowered, in behalf of the District of Columbia to issue, or cause to be issued, registered or coupon bonds, designated on their faces "permanent improvement bonds," to an amount not exceeding four millions of dollars, one million and one-half of which may be sold during the year one thousand
72 eight hundred and seventy-one, and two millions and one-half during the period ensuing between the first day of January, one thousand eight hundred and seventy-two, and the expiration of the first fiscal quarter after the adjournment of the next regular session of the Legislative Assembly as before said, in denominations of fifty, one hundred, five hundred, and one thousand dollars; the said bonds to be payable within twenty years from the date of their issue, and to bear interest, payable semi-annually, at the rate of seven per centum per annum; and for the punctual payment of the interest and the redemption as herein provided the faith of the government of the District of Columbia is hereby pledged.

SEC. 6. And be it further enacted, That the bonds issued in pursuance of this act shall be signed by the Governor, countersigned by the secretary of the District, and tested by the seal of the District, and shall also be countersigned by the comptroller; and said comptroller shall charge to said board the proceeds of the bonds so issued, and shall keep a record of all bonds issued under this act, the date of issue, and their amount; and all sales thereof shall be made by the Governor, and the proceeds of such sales shall be deposited in the treasury of the District, and be drawn out as herein provided; and neither the said comptroller nor any other officer to whom the custody of said bonds may be intrusted shall issue any one or more thereof, or permit any one or more of them to go out of his possession, except for the purpose and in accordance with the provisions of this act: Provided, That no greater quantity of said bonds shall be signed or prepared for issue than is required for the purposes of this act: And provided further, That the officer in whose custody such bonds are placed shall give such security for their safe keeping as may be required by the Governor, and he shall make full report from time to time to the Legislative Assembly, showing the amount of sales and the proceeds thereof, as well as the amount of interest that shall have accrued or have been paid on account thereof.

SEC. 7. And be it further enacted, That in order to provide for

the payment of the interest and the gradual redemption of the bonds herein authorized, a sum sufficient therefor shall be annually levied and collected upon the assessed value of property, respectively, in the cities of Washington and Georgetown and the county of Washington in the proportion of the improvements which
73 shall be made therein; which sum shall be applied exclusively to the payment of the interest and the redemption of said bonds in the respective proportions as above prescribed.

SEC. 8. And be it further enacted, That any officer of this government, or any fiduciary agent or employé thereof, who shall appropriate or apply, or in any manner consent, aid, or assist in appropriating and applying, by the drawing, signing, or payment of any check, warrant, or otherwise, any portion of any money provided for the redemption of the bonds aforesaid, or for the payment of the interest thereon, or who shall direct or use any money belonging to the improvement fund for any other purpose than those for which the fund was created, shall be deemed to be guilty of a misdemeanor, and on conviction thereof before a court of competent jurisdiction shall be subject to a penalty of not less than five hundred dollars nor more than one thousand dollars, and imprisonment for a term of not less than three nor more than twelve months.

SEC. 9. And be it further enacted, That in view of the emergency arising from the necessity for the improvement and repair of the streets, avenues, alleys, sewers, roads, and bridges in the District of Columbia, this act shall take effect immediately upon its passage.

Approved July 10, 1871.

"*Comprehensive Plan.*"

To the Council of the District of Columbia:

In compliance with a resolution adopted by your honorable body on the 16th instant, the Board of Public Works has the honor to transmit a statement of the improvements which it recommends and the estimated cost thereof, and to submit, for your consideration, a bill providing the necessary means for the execution of the work.

The statement, it will be seen, contemplates permanent improvements in every portion of the District of Columbia, and comprises almost every street and avenue in the cities of Washington and Georgetown, as well as all the roads in the county. It pro-
74 vides for the improvement of the streets in the central part of Washington, by lessening the width of the carriage-ways and paving and sewering them, and also embraces the building of a main sewer from Eighth street northwest to Rock creek, the sewerage of the valley of the Tiber, and the paving and macadamizing of a large number of streets in the less thickly populated sections of the city. It is estimated that four million three hundred and fifty-eight thousand five hundred and ninety-eight dollars ($4,358,598) will be the proportion of the expense to be borne by the treasury of the District in making these improvements, and as, in the opinion of the Board, that amount will be sufficient to complete

them, the necessity of annual appropriations, so far as the prosecution of these works is concerned, will be obviated by the passage of the bill herein respectfully recommended.

Were it required that this seemingly large amount should be paid within a single year, grave apprehensions might justly arise as to the ability of the people to meet so heavy a burden. It is, however, proposed in the bill that the money shall be raised by a loan extending over a period of twenty years, and it will be found to contain careful provision both for the payment of the interest and the extinguishment of the debt. It is believed by the Board that should the bill become a law and proper measures be taken to protect our credit there will be no difficulty in disposing, at a satisfactory rate, of the bonds which it is proposed to issue.

The aggregate of the accompanying statement may at first appear extravagant, but it should be remembered that in Washington alone the city's proportion of the work done upon the streets during the past two years reached nearly a million and a half of dollars. To dispel any suspicion of extravagance in its views or aims, the Board need only invite a comparison of the work accomplished within that time, at so heavy an outlay, with the comprehensive plan of improvements which it proposes to inaugurate and complete within the limit of the estimates.

It is perhaps proper to explain, in this connection, that these estimates are based upon the average rates paid for similar improvements by the city of Washington, less twenty per cent. deducted in view of the plan proposed by the Board to pay cash for all work that may be done under its direction. It was, to a great
75 extent, customary, under the old system, to commence and complete an improvement in advance of any arrangement for the payment of the cost. Contractors were compelled to consider this fact, and also that, as the corporation was rarely in funds to meet its obligations, the assessments, when made, would not yield more than eighty cents on the dollar. To meet this condition of affairs they generally added to their estimates twenty per cent.

Another objectionable practice which, in some instances, prevailed prior to the organization of a government for the District was that of excessive measurements in computing the amount of work done. This will be prevented by the establishment, in advance, of the exact quantities of each kind of work to be executed; and thus, when a contract is entered into, the entire amount to be paid can be specifically determined. No increase can thereafter be allowed, as by the terms of the organic act even the Legislative Assembly is prohibited, after a contract has been made, from granting or authorizing "extra allowance" or "compensation" to the contractor.

Heretofore no improvement made could be considered a permanency; and in numerous instances property assessed for work which it was supposed would accomplish the object desired has, in a short time, been reassessed to remedy some real or fancied defect in the plans first executed. The system adopted by the Board contemplates that a street having once been improved, the property-holder will not be required to meet another assessment for that particular

object, and that the only expense thereafter will be for ordinary repairs that may, from time to time, become necessary.

It will be seen, upon examination, that the statement embraces a thorough system of improvements, which may require years for completion. The Board is of the opinion that the interests of the District imperatively require that the necessary appropriations should at once be granted, in order that operations may be commenced without delay. Contracts for material can then be so regulated as to thwart monopolies and improper combinations, and the projected improvements may be prosecuted in such connection, the one with the other, as to accomplish the largest results for the least outlay.

Under the municipal governments heretofore existing
76 about three hundred thousand dollars were yearly collected and expended as ward and county funds for casual repairs and local improvements, and, in addition, a large amount was collected and applied from the general fund. The plan of the Board contemplates the completion of a grand system of improvements, without one dollar of increased tax upon the property-holders of the District. Indeed, the amount of taxation necessary to pay the interest upon the proposed bonded debt, and to provide a sinking fund for the extinguishment of the principal, will not cost annually the sum heretofore expended as ward and county funds for mere casual repairs, and which, as thus applied, was virtually thrown away.

Regarding the effect of this plan upon the general taxes of the District, the Board respectfully submits that to pay the interest on $4,358,598 in bonds will require in currency $305,101.86. Add the estimated premium on gold for the next one or two years, at ten per cent., and the amount required to pay the interest will be $335,611.86. An addition of three per cent. on the principal in currency (which will be more than sufficient to retire the gold bonds) gives $466,368 as the amount which will have to be raised by taxation to meet yearly the interest and principal of the proposed loan. Of course, with each year the debt will decrease, and in a brief period the rate of taxation will be much less than that stated.

The Board is satisfied, upon careful consideration, that, as a rule, the value of property in the District will not warrant the general introduction of wood or other expensive pavements, and that, if at all used, they should be confined to a few of the principal avenues of communication. It is believed that road-beds of stone, more durable and equally free from dust and mud, can be constructed at less cost than has usually been paid for the most ordinary kind of stone pavements.

The Board begs to state, in conclusion, that a thorough investigation of the subject convinces it that sound policy demands the immediate inauguration of a comprehensive and stable system of improvements, and that if its recommendations should be adopted by the Legislative Assembly property will be enhanced in value to an extent that will more than meet the expenses to be in-

77 curred, the seat of the National Government be rendered attractive to the people, and the proportionate rate of taxation be largely reduced, as compared with that which has heretofore prevailed.

Washington, D. C., June 20, 1871.

H. D. COOKE.
JAMES A. MAGRUDER.
ALEX. R. SHEPHERD.
A. B. MULLET.
S. P. BROWN.

78

ESTIMATED COST

OF

PROPOSED IMPROVEMENTS.

Estimated cost of carrying into effect the proposed improvements exhibited on the ac-

79 Designation.	Gutter-stone, 50 cents per lineal foot.		Graveling, 15 cents per sq. yard.		Grading, 25 cents per cubic yard.		Curbing, $1 per lineal foot.	
	Feet.		*Yards.*		*Y'ds*		*Feet.*	
A street north, between Eleventh and Twelfth streets east	.....	.....	13,000	$1,050	13,000	$3,250	.....	.....
A street south, between Eleventh and Seventeenth streets east	.....	.....	13,000	1,550	16,000	4,000	.....	.....
B street north, between Sixth and Fifteenth streets west	3,060	$1,530	.....	.....	.....	.....	3,060	$3,060
B street north, between Fourth and Sixth streets east	.....	.....	3,240	486	1,084	271	.....	.....
B street south, between Eleventh and Fourteenth streets east	.....	.....	33,000	4,950	33,000	8,250	.....	.....
B street south, between Seventh and Fourteenth streets west	.....	.....	.....	.....	.....	.....	.....	.....
C street north, between Ninth and Fifteenth streets west	4,100	2,050	.....	.....	.....	.....	4,100	4,100
C street north, between Seventeenth and Twenty-first streets west	.....	.....	12,000	1,800	1,200	3,000	.....	.....
C street north, between Twenty-first and Twenty-seventh streets west	.....	.....	4,600	690	4,500	1,115	.....	.....
C street north, between Fourth and Sixth streets west	.....	.....	3,240	480	1,084	271	.....	.....
C street south, between Pennsylvania avenue and Workhouse	.....	.....	31,0 0	4,650	31,000	7,750	.....	.....
C street south, between Eleventh street west and Canal	.....	.....	16,000	2,400	26,000	6,500	.....	.....
D street north, between Sixth and Fifteenth streets west	6,280	3,140	.....	.....	.....	.....	6,280	6,280
D street north, between Seventeenth and Twentieth streets west	.....	.....	12,000	1,800	12,000	3,000	.....	.....
D street north, between Twenty-first and Twenty-seventh streets west	.....	.....	11,000	1,650	12,000	3,000	.....	.....
D street south, between New Jersey avenue and Fourth street east	.....	.....	9,000	1,350	17,400	4,350	.....	.....
D street south, between Fourth and Nineteenth streets east	.....	.....	40,000	6,000	60,000	15,000	.....	.....
D street south, between Fourth and Nineteenth streets east	.....	.....	.....	.....	.....	.....	.....	.....
E street north, between Fourth street east and Fifteenth street west	8,600	4,300	.....	.....	.....	.....	8,600	8,600
E street north, between Eighth and Ninth and Eleventh and Fourteenth streets east	.....	.....	.....	.....	.....	.....	.....	.....
E street north, between Fourth street east and Eastern Boundary	.....	.....	30,000	4,500	65,300	16,325	.....	.....
E street south	.....	.....	.....	.....	.....	.....	.....	.....
F street north, between Fourth and Fifth streets west and Judiciary Square	1,448	724	.....	.....	3,600	900	1,448	1,448
F street north, between Twenty-first and Twenty-seventh streets west	.....	.....	18,000	2,700	18,000	4,500	.....	.....
F street north—Sewer in northeastern valley along G street north, from Thirteenth street east to Tiber creek, with branch up Seventh street east as far as Maryland avenue	.....	.....	.....	.....	.....	.....	.....	.....
F street north, between Seventeenth and Twenty-first streets west	2,732	1,366	.....	.....	12,200	3,050	2,732	2,732
F street south	.....	.....	.....	.....	.....	.....	.....	.....
G street north, between Fourth and Fifteenth streets west	9,140	4,570	.....	.....	.....	.....	9,140	9,140
G street north, between Second street east and Maryland avenue	.....	.....	35,800	5,325	69,000	15,000	.....	.....
G street north, between Seventeenth and Twenty seventh streets west	.....	.....	.....	.....	.....	.....	.....	.....
G street south—Brick pavement, &c., between Ninth and Thirteenth streets east, and grading, graveling, and brick pavements, both sides, between Thirteenth street east and Georgia avenue	.....	.....	.....	.....	.....	.....	.....	.....
G street south, between Third street west and the Canal	.....	.....	10,000	1,500	10,000	2,500	.....	.....
G street south, between Twelfth street east and Congressional Burying-Ground	.....	.....	25,000	3,750	18,000	4,500	.....	.....
H street north, between Seventh and Fourteenth streets west	4,980	2,490	.....	.....	.....	.....	4,980	4,980

companying plans, recommended by the Board of Public Works, District of Columbia.

80	Macadamizing, $1 per sq. yard.	Sewers.	Brick pavement.	Cobble-stone pavement.	Wood pavement.	Total.
Yds.		*Lineal feet.*	*Square yards.*	*Square yards.*	*Square yards.*	
.....	.....	.....	.....	.....	.....	$5,200
.....	.....	.....	.....	.....	.....	5,900
20,400	$20,400	.....	.....	1,020, at 70c., $714	.....	25,704
.....	.....	.....	.....	.....	.....	757
.....	.....	.....	.....	.....	.....	13,200
17,000	17,000	5,400, at $5, $27,000	.....	.....	.....	44,000
11,600	11,600	5,200, at $5, 26,000	.....	.....	.....	43,750
.....	.....	.....	.....	.....	.....	4,800
.....	.....	.....	.....	.....	.....	1,805
.....	.....	.....	.....	.....	.....	757
.....	.....	.....	.....	.....	.....	12,400
.....	.....	8,000, at $5, 40,000	.....	.....	.....	48,900
17,000	17,000	5,400, at $5, 27,000	.....	2,090, at 70c., 1,463	.....	54,883
.....	.....	.....	.....	.....	.....	4,800
.....	.....	.....	.....	.....	.....	4,650
.....	.....	.....	.....	.....	.....	5,700
.....	.....	.....	.....	.....	.....	21,000
.....	.....	.....	.....	.....	.....	*a*32,000
20,000	20,000	9,000, at $5, 45,000	.....	2,870, at 70c., 2,009	.....	79,909
.....	.....	.....	.....	.....	.....	*b*6,600
.....	.....	.....	.....	.....	.....	20,825
.....	.....	.....	.....	.....	.....	.....
4,000	4,000	1,500, at $5, 7,500	1,448, at $1, $1,448	.....	.....	16,020
3,500	3,500	.....	.....	.....	.....	10,700
.....	.....	6,000, at $12, 72,000	.....	.....	.....	72,000
.....	.....	.....	1,370, at $1, 1,370	900, at 70c., 630	.....	9,148
24,000	24,000	8,800, at $5, 44,000	.....	3,050, at 70c., 2,135	.....	83,845
.....	.....	.....	.....	.....	.....	20,325
.....	.....	.....	.....	.....	30,000, at $2, $60,000*c*	60,000
.....	.....	.....	.....	.....	.....	9,500
.....	.....	.....	.....	.....	.....	4,000
.....	.....	.....	.....	.....	.....	8,250
10,840	10,840	5,600, at $5, 28,000	.....	1,660, at 70c., 1,152	.....	47,472

a Curbs, sidewalks, &c., both sides.

b Brick pavement.

c Bluestone pavement.

81 Designation.	Gutter-stone, 50 cents per lineal foot.		Gravelling, 15 cents per sq. yard.		Grading, 25 cents per cubic yard.		Curbing, $1 per lineal foot.	
	Feet.		*Yards.*		*Yds.*		*Feet.*	
H street north, between Eighteenth and Twenty-first streets west			8,000	$1,200	3,000	$750		
H street north, from Fourth street west to the Tiber								
H street north, between Twenty-first and Twenty-seventh streets west			17,000	2,550	28,000	7,000		
H street south, between Seventh and Tenth streets west			7,000	850	21,000	5,250		
H street south, from Four and-a-half street to the Canal			14,000	2,100	9,000	2,250		
I street north, between Twentieth and Twenty-first streets west			8,000	450				
I street north, between Twenty-first and Twenty seventh streets west			17,000	2,550	10,000	2,500		
I street north, between Fourth street west and Tiber								
I street north, between Seventh street east and Eastern Boundary			17,000	2,550	18,000	4,500		
I street south, between Virginia avenue and Seventh street east and Georgia avenue and Eighth street east								
I street south, between Four and-a-half street west and New Jersey avenue			22,000	3,300	22,000	5,500		
K street north, between Fourth and Twelfth streets west	13,700	$6,850					13,700	13,700
K street north, between Seventeenth street west and New Hampshire avenue	4,800	2,400					4,800	4,800
K street north, between Circle and Rock creek bridge	4,000	2,000					4,000	4,000
K street north, from Seventh street west to Tiber								
K street south, between Ninth and Eleventh streets east								
K street south, between Four and-a-half street west and Canal			13,000	1,950	17,000	4,250		
L street north, between Fourth and Fifteenth streets west	8,732	4,366					8,732	8,732
L street north, between Fifteenth and Twenty-fourth streets west					14,000	3,500		
L street north, between Twentieth and Twenty-third streets west					18,000	4,500		
L street north, between Fourth street west and the Tiber								
L street south, between Ninth and Eleventh streets east								
L street south, between New Jersey avenue and South Carolina avenue								
For construction of sewers to drain G, H, I, and K streets south, between Third street west and James creek								
M street north, between Fifteenth street west and Rock creek					40,000	10,000		
For paving and sewering M street north, between New York avenue and Vermont avenue								
M street south, between Fourth and Tenth streets east								
M street south, between Third and Seventh streets west			10,700	1,605	10,700	2,675		
N street north, between Fourth and Fifteenth streets west	9,000	4,500					9,000	9,000
N street north, between Rhode Island avenue and Twenty-fifth street west								
N street north, between Fifteenth street west and Rock creek			32,500	4,875	56,600	14,150		
N street south, between Ninth street east and Eleventh street east, grading, graveling, brick pavement, &c								
O street north, between Tenth street west and Vermont avenue, and New Hampshire avenue and Twenty-second street west								
O street north, between Fifteenth street west and Seventeenth street west, for repairing, extending, improving, &c								

82	Macadamizing, $1 per sq. yard.	Sewers.	Brick pavement.	Cobble-stone pavement.	Wood pavement.	Total.
Yds.		*Lineal feet.*	*Square yards.*	*Square yards.*	*Square yards.*	
.....	.....	.....	.....	.....	.....	$1,950
.....	.....	5,200, at $5, $26,000	.....	.....	.....	26,000
3,500	$3,500	.....	.....	.....	.....	13,050
.....	.....	.....	.....	.....	.....	6,100
.....	.....	.....	.....	.....	.....	4,350
.....	.....	.....	.....	.....	.....	450
3,500	3,500	.....	.....	.....	.....	8,550
.....	.....	5,200, at $5, $26,000	.....	.....	.....	26,000
.....	.....	.....	.....	.....	.....	7,050
.....	.....	.....	6,800, at $1, $6,800	.....	.....	6,800
.....	.....	.....	.....	.....	.....	8,800
17,287	17,287	4,100, at $5, 20,500	.....	4,570, at 70c., $2,199	.....	60,536
11,000	11,000	.....	.....	1,600, at 70c., 1,120	.....	19,320
.....	.....	.....	.....	.....	8,000, at $2, $16,000d	22,000
.....	.....	9,000, at $7, 63,000	.....	.....	.....	63,000
.....	.....	.....	2,100, at $1, 2,100	.....	.....	2,100
.....	.....	.....	.....	.....	.....	6,200
22,575	22,575	8,732, at $5, 43,660	.....	2,910, at 70c., 2,037	.....	81,370
30,000	30,000	3,150, at $5, 15,750	.....	.....	.....	49,250
.....	.....	.....	.....	.....	.....	4,500
.....	.....	5,200, at $5, 26,000	.....	.....	.....	26,000
.....	.....	.....	1,000, at $1, 1,000	.....	.....	1,000
.....	.....	.....	6,000, at $1, 6,000	.....	.....	6,000
.....	.....	11,000, at $5, 55,000	.....	.....	.....	55,000
34,000	34,000	11,000, at $5, 55,000	.....	.....	.....	99,000
.....	.....	.....	.....	.....	.....	160,324
.....	.....	.....	.....	.....	.....	15,000
.....	.....	.....	.....	.....	.....	4,280
21,414	21,414	9,000, at $5, 45,000	.....	3,000, at 70c., 2,100	.....	79,914
.....	.....	9,800, at $5, 49,000	.....	.....	.....	49,000
.....	.....	.....	.....	.....	.....	19,025
.....	.....	.....	.....	.....	.....	3,500
.....	.....	4,150, at $5, 20,750	.....	.....	.....	20,750
.....	.....	.....	.....	.....	.....	1,000

d Stone pavement.

83 Designation.	Gutter-stone, 50 cents per lineal foot.		Gravelling, 15 cents per sq. yard.		Grading, 25 cents per cubic yard.		Curbing, $1 per lineal foot.	
	Feet.		*Yards.*		*Y'ds.*		*Feet.*	
P street north, between Ninth street west and Twenty-second street west					20,000	$5,000		
P street north, between Ninth street west and Twenty-second street west	3,200	$1,600					3,200	$3,200
Paving and sewering alleys in squares 446, 447, 448, between M and P streets north and Sixth and Seventh streets west								
Q street north, between Tenth and Twenty-second streets west								
Q street north, between Seventh and Fourteenth streets west			16,700	$2,505	3,500	875		
R street north, between Vermont avenue and Boundary								
R street north, between Fourteenth street east and Eastern Boundary	4,980	2,490	32,700	4,905	28,000	7,000	4,980	4,080
R street north, between Seventh street east and First street east								
S street north, from Boundary street to Boundary street								
T street north, from Seventeenth street west to Nineteenth street west								
T street north, from Seventh street west to Fourteenth street west			17,000	2,550	5,000	1,250		
T street north, from Eighth street east and East Boundary								
U street north, from Boundary street to Boundary street			31,000	3,720	20,000	5,000		
V street north, from Vermont avenue to Boundary			31,000	3,720	20,000	5,000		
W street north, from Boundary street to Boundary street			31,000	3,720	20,000	5,000		
Boundary street, from Ninth street west to Twenty-second street west, for grading and macadamizing from P street bridge to Bladensburg road								
Continuation of sewer in C street north, between Second street east and New Jersey avenue; along said avenue to E street south, and along E street south to the canal								
Main sewer, commencing at Boundary street and Eighth street west, running along Eighth street west to T street north; along T street north to New Hampshire avenue; southwesterly along New Hampshire avenue to Eighteenth street west; thence along Eighteenth street west to Massachusetts avenue; thence south with said avenue to Sixteenth street west; thence along Sixteenth west to L street; thence along L street to near Twenty-second street west; thence in a direct line along the course of the Slash Run to Rock Creek								
Main sewer, sixth ward; commencing at Ninth street east and South Carolina avenue, running along said avenue to Eighth street south; thence along said street to E street south; thence along said street to Seventh street east; thence along said street to M street south; and west along M street to the river								
Constructing sewer of similar dimensions from Pennsylvania avenue along the Tiber Valley to Gales's, with lateral branch to old St. Patrick's burying ground								
First street west								
First street east, between B street south and Georgia avenue			4,200	6,300	20,000	5,000		
First street east, between D and H streets north	1,500	750	14,000	2,100	31,000	7,750	1,500	1,500
Second street west								
Second street east, between A street north and North Carolina avenue								
Third street west, between G and N streets south			19,000	2,850	18,700	4,675		

a North Carolina avenue to A street north. *b* A to F street north.

84	Macadamizing, $1 per sq. yard.	Sewers.	Brick pavement.	Cobble-stone pavement.	Wood pavement.	Total.
Y'ds.		*Lineal feet.*	*Square yards.*	*Square yards.*	*Square yards.*	*Total.*
.....	.....	11,400, at $5, $57,000	.....	.....	.....	$62,000
66,181	$66,181	.....	.....	.....	.....	70,981
.....	.....	.....	.....	.....	.....	10,000
.....	.....	11,850, at $5, 59,250	.....	.....	.....	59,250
.....	.....	.....	.....	.....	.....	3,380
.....	.....	10,700, at $5, 53,500	.....	.....	.....	53,500
.....	.....	.....	.....	1,700, at 70c., $1,190	.....	20,565
.....	.....	8,500, at $5, 42,500	.....	.....	.....	42,500
.....	.....	16,250, at $5, 81,250	.....	.....	.....	81,250
.....	.....	2,700, at $5, 13,500	.....	.....	.....	13,500
.....	.....	.....	.....	.....	.....	3,800
.....	.....	1,400, at $5, 7,000	.....	.....	.....	7,000
.....	.....	9,180, at $5, 45,900	.....	.....	.....	54,620
.....	.....	8,400, at $5, 42,000	.....	.....	.....	50,720
.....	.....	5,260, at $5, 26,300	.....	.....	.....	35,020
.....	128,000	10,000, at $5, 50,000	.....	.....	.....	178,000
.....	.....	2,700, at $5, 21,600	.....	.....	.....	21,600
.....	.....	14,910, at $20, 298,200	.....	.....	.....	298,200
.....	.....	4,231, at $12, 50,772	.....	.....	.....	50,772
.....	.....	11,000, at $60, 660,000	.....	.....	.....	660,000
.....	.....	.....	.....	.....	.....	.....
.....	.....	a4,000, at $5, 20,000	.....	.....	.....	31,300
.....	.....	b4,000, at $5, 20,000	.....	500, at 70c., 350	.....	32,450
.....	.....	.....	.....	.....	.....	.....
.....	.....	3,000, at $5, 15,000	.....	.....	.....	15,000
.....	.....	c1,844, at $5, 9,220	.....	.....	.....	16,745

c E to I street north.

85 Designation.	Gutter-stone, 50 cents per lineal foot.		Graveling, 15 cents per sq. yard.		Grading, 25 cents per cubic yard.		Curbing, $1 per lineal foot.	
	Feet.		*Yards.*		*Yds*		*Feet.*	
Third street east, between E street north to the Boundary			26,000	$3,300	31,000	$7,975		
Fourth street west, between D and N street north	8,000	$4,000					8,000	$8,000
Fourth street east, between M and N streets south								
Fourth street east, between East Capitol and E streets south			14,000	2,100	14,500	3,630		
Fourth street east, between E street north and the Boundary			26,000	3,900	3,300	8,250		
Fourth street east, between B and E streets north								
Fourth street east, between M street south and Georgia avenue, setting curbstone, repairing footwalks, &c								
Fourth street east, between Maryland avenue and H street north, setting curbstones, repairing footwalks, &c								
Fifth street west, between G and M streets north	4,500	2,250					4,500	4,500
Fifth street east, between K and M streets south								
Fifth street east, between East Capitol and E streets north			14,000	2,100	3,000	2,000		
Four-and-a-half street west, from Canal to Arsenal								
Sixth street west, from Canal to N street south	1,200	600					1,200	1,200
Sixth street east, from B street south to the river								
Sixth street east, between G and I streets south, grading, graveling, brick pavements, gutters, &c								
Sixth street east, between East Capitol and E streets south			14,000	2,100	8,000	2,000		
Sixth street east, between E street north and the Boundary			30,000	4,500	40,000	10,000		
Seventh street west, between M street north and the Boundary								
Seventh street west, between L street north and the Boundary								
Seventh street west, from B street south to the river								
Seventh street east, between H street north and Boundary, which includes sidewalks, graveling, &c, to Deaf and Dumb Asylum								
Eighth street west, between Pennsylvania avenue and N street north	8,000	4,000					8,000	8,000
Eighth street west, between B street south and the river			24,000	3,600	24,000	6,000		
Ninth street west, from the river to the Boundary, all portions not already sewered								
Ninth street west, from Pennsylvania avenue to N street north								
Ninth street east, between M and N streets south, grading, graveling, brick pavement, &c								
Ninth street east, between East Capitol and E streets south			14,000	2,100	12,000	3,000		
Tenth street west, between Canal and N street north	7,900	3,950					7,900	7,900
Tenth street west, between N street north and Boundary								
Tenth street east, between I street south and N street south, brick pavement, graveling, &c								
Tenth street east, between East Capitol and E streets north			14,000	2,100	13,500	3,375		
Eleventh street west, between Canal and N streets north	9,000	4,500					9,000	9,000
Eleventh street west, between B street south and river								
Eleventh street west, between E street north and Boundary								
Eleventh street east, brick pavement from Q street to Navy-yard bridge								

d A street north to E street south. *e* West side.

86	Macadamizing, $1 per sq. yard.	Sewers.	Brick pavement.	Cobble-stone pavement.	Wood pavement.	Total.
Yds.		*Lineal feet.*	*Square yards.*	*Square yards.*	*Square yards.*	
.....	.....	*d*5,600, at $5, $2,800	.....	.....	.....	$39,275
20,000	$20,000	2,400, at $5, 12,000	.....	2,700, at 70c., $1,890	.....	45,890
.....	.....	.....	.....	.....	.....	1,000
.....	.....	.....	.....	.....	.....	5,730
.....	.....	.....	.....	.....	.....	12,150
.....	.....	.....	4,000, at $1, $4,000	.....	.....	*e*4,000
.....	.....	.....	.....	.....	.....	1,000
.....	.....	.....	.....	.....	.....	6,700
12,000	12,000	2,400, at $5, 12,000	.....	1,500, at 70c., 1,050	.....	31,800
.....	.....	.....	.....	.....	.....	*f*5,550
.....	.....	.....	.....	.....	.....	4,100
.....	.....	13,000, at $5, 65,000	.....	.....	*g*50,600, at $2, 101,200	166,200
24,640	24,640	*h*18,000, at $5, 90,000	.....	370, at 70c., 259	.....	116,669
40,000	40,000	.....	.....	.....	.....	40,000
.....	.....	.....	.....	.....	.....	5,000
.....	.....	.....	.....	.....	.....	4,100
.....	.....	.....	.....	.....	.....	14,500
.....	.....	6,600, at $5, 33,000	.....	.....	.....	33,000
.....	.....	.....	.....	24,900, at 70c., 17,430	.....	17,430
.....	.....	18,600, at $5, 93,000	.....	.....	23,194, at $4, 92,776	185,776
.....	.....	.....	.....	.....	.....	12,300
18,000	18,000	6,000, at $5, 30,000	.....	2,700, at 70c., 1,890	.....	61,800
.....	.....	6,800, at $5, 34,000	.....	.....	.....	43,600
.....	.....	13,000, at $5, 65,000	.....	.....	.....	65,000
48,000	48,000	.....	.....	.....	.....	48,000
.....	.....	.....	.....	.....	.....	5,100
.....	.....	.....	.....	.....	.....	5,100
17,000	17,000	4,100, at $5, 20,500	.....	2,700, at 70c., 1,890	.....	51,240
.....	.....	10,180, at $5, 50,900	.....	.....	.....	50,900
.....	.....	.....	.....	.....	.....	7,000
.....	.....	.....	.....	.....	.....	5,475
21,000	21,000	7,000, at $5, 35,000	.....	2,300, at 70c., 1,610	.....	66,610
.....	.....	4,800, at $5, 24,000	.....	.....	.....	24,000
.....	.....	19,400, at $5, 52,000	.....	.....	.....	52,000
.....	.....	.....	.....	.....	.....	1,000

f Grading and gravelling. *g* Stone paving. *h* Between river and Boundary.

87 Designation.	Gutter-stone, 50 cents per lineal foot.		Gravelling, 15 cents per sq. yard.		Grading, 25 cents per cubic yard.		Curbing, $1 per lineal foot.	
	Feet.		*Yards.*		*Y'ds.*		*Feet.*	
Eleventh street east, between East Capitol and E streets north	.....	.....	14,000	$2,100	13,000	$3,250	.....	.....
Twelfth street west, between Canal and E streets north	9,100	$4,550	.....	.....	.....	.....	9,100	$9,100
Twelfth street west, between B street south and river	.....	.....	.....	.....	.....	.....	.....	.....
Twelfth street west, between N street north and Boundary	.....	.....	.....	.....	.....	.....	.....	.....
Twelfth street east, grading, graveling, brick pavement, gutters, &c., from E street south to Virginia avenue	.....	.....	.....	.....	.....	.....	.....	.....
Thirteenth street west, between Canal and N streets north	9,230	4,615	.....	.....	.....	.....	9,230	9,230
Thirteenth street west, between N street north and Boundary	.....	.....	.....	.....	.....	.....	.....	.....
Thirteenth street east, brick pavement, &c., between E street south and Pennsylvania avenue; same between I street and Virginia avenue, with grading and graveling between E street and Virginia avenue	.....	.....	.....	.....	.....	.....	.....	.....
Thirteenth street east, between East Capitol and E streets north	.....	.....	14,000	2,100	25,000	6,250	.....	.....
Thirteen-and-a-half street west, between Canal street and Pennsylvania avenue	1,900	950	.....	.....	.....	.....	1,900	1,900
Fourteenth street west, between Rhode Island avenue and D street north	.....	.....	.....	.....	.....	.....	.....	.....
Fourteenth street east, grading, graveling, brick pavement, both sides, between E and L streets south	.....	.....	.....	.....	.....	.....	.....	.....
Fourteenth street west, between H street north and Boundary	.....	.....	.....	.....	.....	.....	.....	.....
Fifteenth street west, between Canal and N street north (*b*)	8,950	4,475	.....	.....	.....	.....	8,950	8,950
Fifteenth street west, between N street north and Boundary	.....	.....	.....	.....	.....	.....	.....	.....
Fifteenth street east, between North Carolina avenue and Benning's Bridge road	.....	.....	16,200	2,430	15,000	4,750	.....	.....
Sixteenth street west, between K street and Boundary	.....	.....	.....	.....	.....	.....	.....	.....
Seventeenth street west, between Massachusetts avenue and Boundary	.....	.....	.....	.....	.....	.....	.....	.....
Seventeenth street west, between L street north and Boundary	.....	.....	39,000	5,850	39,000	9,750	.....	.....
Eighteenth street west, between L street and Massachusetts avenue and Q street and Boundary	.....	.....	30,000	4,500	30,000	7,500	.....	.....
Eighteenth street west, between K street and Canal	.....	.....	16,000	2,400	5,000	1,250	.....	.....
Nineteenth street west, between Connecticut avenue and Boundary and I and L streets	.....	.....	.....	.....	.....	.....	.....	.....
Nineteenth street west, between K street and Canal	.....	.....	28,000	4,200	9,000	2,250	.....	.....
Twentieth street west, between I street and New Hampshire avenue and Boundary	.....	.....	.....	.....	.....	.....	.....	.....
Twentieth street west, between K street and Canal	.....	.....	22,000	3,300	10,000	2,500	.....	.....
Twenty-first street west, between I street north and Boundary	.....	.....	.....	.....	.....	.....	.....	.....
Twenty first street west, between K street and Canal	.....	.....	22,000	3,300	8,000	2,000	.....	.....
Twenty-second street west, between K and O streets north	.....	.....	.....	.....	.....	.....	.....	.....
Twenty-third street west, between Pennsylvania avenue and Connecticut avenue	.....	.....	.....	.....	.....	.....	.....	.....
Twenty-fourth street west, between Pennsylvania avenue and Rock creek (between I and E sts.)	.....	.....	15,000	2,250	10,000	2,500	.....	.....
Twenty-fifth street west, between Pennsylvania avenue and Rock creek (between M street and Potomac)	.....	.....	33,000	4,950	74,000	18,500	.....	.....
North Capitol street, between B and E streets north	.....	.....	.....	.....	.....	.....	2,600	2,600
North Capitol street, between E street north and Boundary	.....	.....	.....	.....	.....	.....	.....	.....

a East Capitol to I street.

b Except where sewered and paved.

88	Macadamizing, $1 per sq. yard.	Sewers.	Brick pavement.	Cobble-stone pavement.	Wood pavement.	Total.
Y'ds.		*Lineal feet.*	*Square yards.*	*Square yards.*	*Square yards.*	
.....	.....	a6,920, at $5, $34,600	.....	.....	.....	$39,050
21,000	$21,000	2,600, at $5, 13,000	.....	3,030, at 70c., $2,121	.....	49,771
14 000	14,000	4,800, at $5, 24,000	.....	.....	.....	38,000
.....	.....	9,900, at $5, 49,500	.....	.....	.....	49,500
.....	.....	.....	.....	.....	.....	8,100
21,000	21,000	.....	.....	3,080, at 70c., 2,156	.....	37,001
.....	.....	8,450, at $5, 42,250	.....	.....	.....	42,250
.....	.....	.....	.....	.....	.....	17,100
.....	.....	.....	.....	.....	.....	8,350
5,000	5,000	2,200, at $5, 11,000	.....	630, at 70c., 431	.....	19,281
.....	.....	7,950, at $5, 39,750	.....	.....	.....	39,750
.....	.....	.....	.....	.....	.....	21,000
.....	.....	.....	.....	.....	55,000, at $4, 220,000	220,000
21,000	21,000	4,400, at $5, 22,000	.....	2,650, at 70c., 1,855	.....	58,280
.....	.....	11,650, at $5, 58,250	.....	.....	.....	58,250
.....	.....	.....	.....	.....	.....	6,180
.....	.....	8,500, at $5, 42,500	.....	.....	.....	42,500
.....	.....	6,750, at $5, 32,750	.....	.....	.....	32,750
.....	.....	.....	.....	.....	.....	15,600
.....	.....	8,150, at $5, 40,750	.....	.....	.....	52,750
.....	.....	.....	.....	.....	.....	3,650
.....	.....	5,550, at $5, 27,750	.....	.....	.....	27,750
.....	.....	.....	.....	.....	.....	6,450
.....	.....	9,300, at $5, 46,500	.....	.....	.....	46,500
.....	.....	.....	.....	.....	.....	5,800
.....	.....	8,850, at $5, 44,250	$8,500c	.....	.....	52,750
.....	.....	.....	.....	.....	.....	5,300
.....	.....	9,200, at $5, 46,000	.....	.....	.....	46,000
.....	.....	3,500, at $5, 17,500	.....	.....	.....	17,500
.....	.....	3,650, at $5, 18,250	.....	.....	.....	23,000
.....	.....	3,400, at $5, 17,000	.....	.....	.....	50,450
.....	.....	2,990, at $5, 14,950	.....	.....	.....	17,550
.....	.....	11,000, at $5, 55,000	.....	.....	.....	55,000

c Other improvements.

89 Designation.	Gutter-stone, 50 cents per lineal foot.		Gravelling, 15 cents per sq. yard.		Grading, 25 cents per cubic yard.		Curbing, $1 per lineal foot.	
	Feet.		*Yards.*		*Y'ds.*		*Feet.*	
East Capitol street, between First street east and Lincoln square			56,000	$8,400	19,000	$4,750		
New York avenue, between Fourth and Fifteenth streets west	8,160	$4,080					8,160	$8,160
New York avenue, between Seventeenth and Twenty first streets west			28,000	4,200	10,000	2,500		
New York avenue, between Twenty-first and Twenty third streets west			13,500	2,025	18,000	4,500		
Massachusetts avenue, between Fourth and Fifteenth streets west	8,790	4,395					8,790	8,790
Massachusetts avenue, between Fourteenth and Twenty second streets west								
Massachusetts avenue, between North Capitol and Nineteenth streets east			132,000	19,800	18,000	18,000		
Vermont avenue, between K and N streets north	2,840	1,420					2,840	2,840
Vermont avenue, between K street and Boundary								
Vermont avenue, between N street and Boundary			4,500	6,750	15,000	3,750		
Rhode Island avenue, between Tenth and Eighteenth streets west								
Rhode Island avenue, between Seventh and Fourteenth streets west	2,980	1,490	31,000	4,650	10,400	2,600	2,986	2,986
New Hampshire avenue, between Pennsylvania avenue and Eighteenth street and T street north and Boundary								
New Hampshire avenue, between river and Boundary			39,000	5,850	90,000	22,500		
Connecticut avenue, between Eighteenth and Twenty-first streets west								
Pennsylvania avenue, between Fifteenth street and Aqueduct bridge								
Pennsylvania avenue, between Thirteenth and Eighteenth streets east								
Pennsylvania avenue, between First and Eighth streets east								
Virginia avenue, from Seventh street to Rock creek			46,900	7,035	94,000	23,500		
Virginia avenue, from Third street east to South Capitol								
Virginia avenue, between Sixth and Seventh, Eighth and Ninth, Tenth and Eleventh streets east			54,000	8,100				
New Jersey avenue, from New York avenue to the Boundary					36,000	9,000	5,400	5,400
Georgia avenue, brick pavement between avenue								
Georgia avenue, brick pavement between Third								
Georgia avenue, from M south to Nineteenth street east			72,000	10,800	9,800	21,500		
Maryland avenue, between First street east and East Boundary			102,000	15,300	37,000	21,750		
North Carolina avenue, between New Jersey avenue and East Boundary			61,280	9,192	93,000	13,950		
South Carolina avenue, from Second to Fifteenth streets east			72,000	10,800	98,000	24,500		
Delaware avenue, from B street north to Boundary			80,000	12,000	84,000	21,000		
Delaware avenue, from B street south to P street south			80,000	12,000	130000	32,500		
Improvements and repairs in 11th district								
Improvements and repairs in 18th district								
Lamps throughout city								
Relaying stone pavement of Seventh street west, from L street north to Boundary								
Paving and sewering alleys in squares 446, 447, and 448								
Water-main on F street, from Eleventh to Thirteenth streets west, and on Thirteenth street, from S to E streets north								
Water-main on Eleventh street west, from P to T streets north								

90	Macadamizing, $1 per sq. yard.	Sewers.	Brick pavement.	Cobble-stone pavement.	Wood pavement.	Total.
Y'ds.		*Lineal feet.*	*Square yards.*	*Square yards.*	*Square yards.*	
.....	.....	.....	.....	.....	.....	$13,150
13,740	$13,740	9,000, at $5, $45,000	.....	2,720, at 70c., $1,904	.....	72,884
.....	.....	.....	.....	.....	.....	6,700
.....	.....	.....	.....	.....	.....	6,525
20,530	20,530	11,600, at $5, 58,000	.....	2,930, at 70c., 2,051	.....	93,766
.....	.....	5,250, at $5, 26,250	.....	.....	.....	26,250
.....	.....	2,000, at $5, 10,000	.....	.....	.....	47,800
4,170	4,170	3,600, at $5, 18,000	.....	950, at 70c., 675	.....	27,105
.....	.....	10,300, at $5, 51,500	.....	.....	.....	51,500
.....	.....	.....	.....	.....	.....	10,500
.....	.....	5,150, at $5, 25,750	.....	.....	.....	25,750
.....	.....	.....	.....	990, at 70c., 693	.....	12,419
.....	.....	7,740, at $5, 38,700	.....	.....	.....	38,700
.....	.....	.....	.....	.....	.....	28,350
.....	.....	2,400, at $5, 12,000	.....	.....	.....	12,000
.....	.....	.....	.....	.....	63,530, at $4, $264,120	264,120
.....	.....	.....	.....	.....	.....	14,900
.....	.....	.....	.....	.....	450,000, at $2, 100,000	100,000
.....	.....	.....	.....	.....	.....	30,525
.....	.....	.....	.....	.....	.....	6,400
.....	.....	.....	.....	.....	.....	8,100
.....	.....	*c* 18,000, at $5, 90,000	.....	.....	.....	112,500
.....	.....	.....	.....	.....	.....	33,000
.....	.....	.....	.....	.....	.....	1,200
.....	.....	.....	.....	.....	.....	35,300
.....	.....	.....	.....	.....	.....	37,050
.....	.....	.....	.....	.....	.....	23,142
.....	.....	.....	.....	.....	.....	35,300
.....	.....	.....	.....	.....	.....	33,000
.....	.....	.....	.....	.....	.....	44,500
.....	.....	.....	.....	.....	.....	150,000
.....	.....	.....	.....	.....	.....	150,000
.....	.....	.....	.....	.....	.....	45,000
.....	.....	.....	.....	.....	.....	17,430
.....	.....	.....	.....	.....	.....	10,000
.....	.....	.....	.....	.....	.....	5,500
.....	.....	.....	.....	.....	.....	6,300

d Stone pavement.

e B north to Boundary.

91 Designation.	Gutter-stone, 50 cents per lineal foot.		Gravelling, 15 cents per sq. yard.		Grading, 25 cents per cubic yard.		Curbing, $1 per lineal foot.	
	Feet.		*Yards.*		*Y'ds.*		*Feet.*	
Water-main on Vermont avenue, from T to W streets north, and Tenth street west, from T to W streets north								
Water-main on Sixteenth street west, from L street north to Boundary								
Alleys in squares 274, 335, 337, 309, and 365								
Paving alleys and abating nuisances in various sections								
Gas-pipe on Sixteenth street west, from L street north to Boundary								
Fire-plugs on Sixteenth street west, from L street north to Boundary								
Planting trees								
GEORGETOWN.								
Carrying out the improvements, such as grading, sewering, curbing, etc., certain streets, as specified in a letter to board of Hon. W. D Cassin, dated June 1, 1871, (see letter attached)								
Paving, grading, etc., Bridge, Montgomery, Green, Congress, Washington, High streets, etc								
UNIONTOWN.								
Jackson street, grading and gravelling								
Queen Chapel road								
Stanton avenue								
COUNTY.								
Grading Asylum Hill and improving road								
Two culverts on the Anacostia road								
Repairs of roads east of Eastern branch								
Opening Sixteenth street west, from Boundary street to Piney branch								
Repairs of Bladensburg turnpike road								
Improving Seventh street road								
Bridge across Piney branch and Seventh street road								
Repair, grading, and extending Woodby road								
Bridge at Pierce's Mill, and opening road from same to or near stone quarry on old road								
Repairs of roads west of Rock creek								
Repairs between Rock creek and Eastern branch								
Stone abutment for bridge on Military road at Rock creek								
Repairs of road leading from Georgetown to Chain Bridge; also of road leading to Drovers' Rest, and of other roads not herein mentioned								
Total								

Deduct 20 per cent. of amount of estimates saved by the adoption of the cash system prepared by

Deduct ⅓, chargeable to property

The Honorable A. B. MULLETT,
Chief Engineer Board of Public Works, District of Columbia.

92 Macadamizing, $1 per sq. yard.	Sewers.	Brick pavement.	Cobble-stone pavement.	Wood pavement.	Total.
Yds.	*Lineal feet.*	*Square yards.*	*Square yards.*	*Square yards.*	
					$16,800
					15,000
					5,600
					51,000
					10,000
					1,200
					50,000
					250,000
					250,000
					3,000
					5,000
					3,000
					4,000
					2,600
					4,000
					7,500
					23,000
					2,500
					4,000
					6,000
					6,000
					6,600
					15,500
					1,800
					15,000
					$8,222,996
the Board					1,644,599
					6,578,397
					2,192,799
					$4,385,598

Respectfully submitted.

WM. FORSYTH,
First Ass't Engineer Board of Public Works.

93 *The following is the letter referred to under the head of "Georgetown:"

JUNE 1, 1871.

A. R. Shepherd, Esq.

DEAR SIR: In response to yours of 25th May, instant, I beg leave to call the attention of the Board of Public Works to the condition of First, Second, Third, Fourth, Fifth, and Sixth streets in Georgetown, D. C. The corporation of Georgetown, some twelve months since, undertook to improve Fifth and Sixth streets, and after excavating the one and filling the other have left both in an unfinished condition. I consider it necessary that the work on said two streets should be completed by proper grading, curbing, and gutters. First, Second, Third, and Fourth streets are greatly in need of improvements and repairs. In winter, at some points, the carriage-ways are almost impassable, and the sidewalks and gutters need attention at once, not only as an improvement, but as a sanitary measure. Market, Frederick, and Fayette streets, crossing the above, are, in many places, both as to the carriage-ways and sidewalks, greatly in need of improvements and repairs. While not designating the particular points in the above streets which, in my judgment, need improvements, preferring to leave that to the better judgment of the Board of Public Works, I would especially call their attention (the same having been called to my own) to the sidewalks and carriage-ways on Frederick street, between First and Second streets, the east side of Market Space, between Second and Third streets, and Fourth street, between High and Fayette streets; also to the condition of the various sewers throughout my district, especially those of First street. I deem their improvement as a matter of necessity, not only as an improvement, but as a sanitary measure. In summer it often occurs that the smell arising from them forces persons to take other directions. It has been suggested that this can be remedied by placing in each, on the street, proper traps, and arching the sewers approaching the street. I would add that after the receipt of your letter I requested a number of my constituents in various portions of my district to make suggestions as to needed improvements, but as yet have heard from but few. Should they do so hereafter, I shall take pleasure in calling the attention of the Board of Public Works to such improvements as they may suggest, or such as may come to my own knowledge.

Very respectfully, W. D. CASSIN.

94 EXHIBIT C. Filed May 9, 1885. R. J. Meigs, Clerk

THE DISTRICT OF COLUMBIA
vs.
THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY. } At Law. No. 22457.

Schedule Showing—

Item.	Date of award.	Date of contract.	Contract price.
1	September 14, 1871	September 18, 1871	$3.20 per sq. yd.
2	July 23, 1872	July 23, 1872	No price stated.
	November 8, 1872	Amendment	" "
3	September 8, 1873	September 8, 1873	$3.20 per sq. yd.
4	September 8, 1873	July 16, 1873	3.50 "
5	September 8, 1873	July 16, 1873	3.50 "
6	September 14, 1871	September 18, 1871	3.00 "
7	September 14, 1871	September 18, 1871	3.20 "
	November 23, 1871	Extension	3.20 "
8	May 10, 1872	September 18, 1871	3.50 "
9	December 1, 1871	December 1, 1871	3.40 "
	August 26, 1872	April 30, 1872	3.00 "
	June 30, 1873	June 30, 1873	No price stated.
	July 5, 1873	Amendment	$3.50 per sq. yd.
	July 25, 1873	July 8, 1873	3.50 "
	July 29, 1873	August 1, 1873	No price stated.
	September 12, 1873	Amendment	$3.50 per sq. yd.
10	No award found; old corporation contract.	March 30, 1871.	
	December 26, 1871	Directed to repair.	
	February 26, 1872	" "	
	October 17, 1872	" "	
11	October 23, 1872	October 23, 1872	3.50 "
12	July 2, 1873	July 8, 1873	4.25 "
	December 1, 1873	December 1, 1873	3.20 "
13	August 12, 1871	August 14, 1871.	
	Old corporation contract.		
14	August 14, 1871	August 14, 1871	No price stated.
	July 25, 1872	Extension	" "
15	April 24, 1872	April 24, 1872	$0.90 per sq. yd.
	Not in declaration.		For repairing.

95 EXHIBIT D. Filed May 9, 1885. R. J. Meigs, Clerk.

DISTRICT OF COLUMBIA
vs.
WASHINGTON & GEORGETOWN RAILROAD CO. } At Law. No. 22457.

Form of Award.

(Journal "A" of Board of Public Works, 1873, p. 402.)

BOARD OF PUBLIC WORKS, DISTRICT OF COLUMBIA,
WASHINGTON, *July* 23, 1873.

The Board met at the usual hour.

The chief engineer was directed to * * * amend contract 740 with Albert Gleason so as to include the paving with Miller

wooden pavement treated the carriage-ways of Seventh street, between E and G streets N. W., and of F street, between 5th and 9th streets N. W., work to be done in first-class condition and completed within twelve (12) working days. * * *

On motion, the Board adjourned.

CHAS. S. JOHNSON,
Ass't Secretary.

EXHIBIT E. Filed May 9, 1885. R. J. Meigs, Cl'k.

THE DISTRICT OF COLUMBIA
vs.
WASHINGTON & GEORGETOWN R. R. Co. } At Law. No. 22457.

Form of Contract. No. 511.

This contract, made and concluded this twelfth day of
96 September, in the year one thousand eight hundred and seventy-two, by and between Henry D. Cooke, Alexander R. Shepherd, James A. Magruder, A. B. Mullett, and S. P. Brown, constituting and composing the Board of Public Works of the District of Columbia, of the first part, and John O. Evans, of Washington, D. C., of the second part, witnesseth:

First. That the said party of the second part has agreed, and by these presents doth agree, with the said party of the first part, for the consideration hereinafter mentioned and contained, and under the penalty expressed in a bond bearing even date with these presents and hereunto annexed, to furnish, at his own proper cost and expense, all the necessary materials and labor, and in a good, firm, and substantial manner to lay and put down the pavement known as and called the Stow wooden pavement, or the pavement known as and called the Miller wood pavement, or the pavement known as and called the Ballard wooden pavement on the carriage-way of Seventh street west, between B street north and B street south; * * * also to lay and put down the said Stow pavement, or the said Miller pavement, or the said Ballard pavement on the carriage-way of East Capitol street, between 1st street and Lincoln square, * * * and the wooden blocks of said Stow, Ballard, and Miller pavements to be burnettized in accordance with certain specifications and according to certain patents named in said contract.

Second. It is further agreed that the said party of the first part shall appoint from time to time such persons or person as may be by said party deemed proper to inspect the material to be furnished and the work to be done under this contract, and that such persons or person shall have any and all opportunity and privileges which may be necessary to enable them to faithfully make the inspection aforesaid.

Third. It is further agreed that the work under this contract shall be commenced on or before the 17th day of September, 1872.

Fourth. It is further agreed that the said party of the first part may, on notice to the parties of the second part, suspend work under this contract, but if not suspended it shall be completed within

thirty days from the date fixed for its commencement, and that the said work shall not be sublet without the consent, in writing,
97 of the said party of the first part, and that any subletting or assignment without such consent shall work a forfeiture of this contract.

Fifth. It is further agreed that if, at any time, the party of the first part shall be of opinion that the said work, or any part thereof, is unnecessarily delayed, or that the said contractor is wilfully violating any of the conditions or covenants of this contract, or is executing the same in bad faith, all of the work may be discontinued under this contract, or any part thereof; and the said party of the first part shall thereupon have the power to place such and so many persons as may be deemed advisable, by contract or otherwise, to work at and complete the work herein described, or any part thereof, and to use such materials as may be found upon the line of said work, or to procure other materials for the completion of the same, and to charge the expense of said labor and materials to the party of the second part; and the expense so charged shall be deducted and paid by the party of the first part out of such moneys as may be then due, or may at any time thereafter grow due, to the said party of the second part, under and by virtue of this agreement or any part thereof; and in case such expense is less than the sum which would have been payable under this contract if the same had been completed, the party of the second part shall be entitled to receive the difference, and in case such expense shall exceed the last said sum the amount of such excess shall be paid to the party of the first part by the party of the second part.

Sixth. It is further agreed that all loss or damage arising out of the nature of the work to be done under this agreement, or from any unforeseen obstructions or difficulties which may be encountered in the prosecution of the same, or from the action of the elements, or from incumbrances to individuals, property, or otherwise, on the line of the work or adjacent thereto, shall be sustained by the said contractor.

Seventh. It is further agreed that the said party of the second part shall punctually pay the workmen who shall be employed by him on work under this contract in cash current and not in what is denominated store pay or orders; and that he will, from time to time, and as often as may be required by said party of the first part, furnish to said party satisfactory evidence that all persons who have done work or furnished materials have been paid, as herein required; and if such evidence is not furnished such sum or sums as
98 may be necessary for such payment or claims shall be retained by said party of the first part until the said claims shall be fully satisfied.

Eighth. And it is further agreed that partial payments shall be made by the duly authorized financial agent of the said party of the first part on the monthly estimates of the chief engineer of the Board of Public Works aforesaid, and that whenever the said chief engineer aforesaid shall certify in writing that the party of the second part completely performed this contract on his part, and shall sub-

mit with said certificate his estimate of the amount due the party of the second part, then, within thirty days, as hereinafter provided, the said party of the second part shall be entitled to receive the full amount due under this contract, deducting therefrom all previous partial payments which may have been made as hereinafter mentioned.

And it is further expressly agreed that no money shall become due and payable under this contract except upon the certificate of said engineer, as hereinbefore provided; and the said party of the second part further agrees that he shall not be entitled to demand or receive payment for any portion of the aforesaid work except in the manner set forth in this agreement; and when each and all of the stipulations hereinbefore mentioned are complied with, and the engineer shall have given his certificate to that effect, a final settlement shall be made in writing between the parties, and the whole amount found due the party of the second part under this contract shall be paid to him, excepting such sum or sums as may be retained under any provision of this contract: Provided, That partial payments may be made under the direction of the Board, otherwise than upon the estimates of the engineer, as provided above, if, in the opinion of the Board, the vigorous prosecution of the work will be promoted thereby.

Ninth. It is further agreed that if at any time during the period of three years from the completion of the work to be done under this contract any part or parts thereof shall become defective from imperfect or improper material or construction, and, in the opinion of the said party of the first part, require repair, the said party of the second part will, on being notified thereof, immediately commence and complete the same to the satisfaction of the party of the first part; and in case of a failure or neglect of the said
99 party of the second part so to do, the same shall be done under the directions and orders of the party of the first part, at the cost and expense of the party of the second part.

Tenth. It is further agreed that the said party of the second part shall receive the following prices as full compensation for furnishing all the materials and labor which may be required in the prosecution of the whole of the work to be done under this agreement, and in all respects completing the same, to wit:

For the Stow wooden pavement, burnettized as aforesaid, per square yard, $3.50, to include two feet of grading.

For the Miller wooden pavement, burnettized as aforesaid, per square yard, $3.50, to include two feet of grading.

For the Ballard wooden pavement, burnettized as aforesaid, per square yard, $3.50, to include two feet of grading.

* * * * * * *

Which said sums or prices the said parties of the first part shall pay to the said parties of the second part, as herein provided.

Eleventh. It is further agreed that the measurements shall be made by the engineer of the said party of the first part or his assistants.

Twelfth. And the said party, constituting and composing the Board of Public Works in and for the District of Columbia aforesaid, agree with the said party of the second part to perform all the stipulations of this contract obligatory in it, and to pay, or cause to be paid, to the said party of the second part, or to his heirs, executors, or administrators, in lawful money of the United States, the amount which may be found from time to time due him, according to the contract.

Thirteenth. It is further agreed that this contract shall be subject to any and all provisions of an act entitled "An act to provide a government for the District of Columbia," approved February 21, 1871, so far as the same shall or may be in any respect applicable to said contract, and also to any law of the District of Columbia pertinent thereto, or to any part thereof, as fully as if the same were particularly set forth herein.

In witness whereof the parties to these presents have
100 hereunto set their hands and seals the day and year first above written.

H. D. COOKE, [L. S.]
ALEX. R. SHEPHERD, [L. S.]
JAMES A. MAGRUDER, [L. S.]
A. B. MULLETT, [L. S.]
Board of Public Works of the District of Columbia.
JOHN O. EVANS, *Contractor.*

Signed and sealed in presence of—
CHAS. W. KREBS.
WM. TINDALL.

Know all men by these presents that John O. Evans, D. S. Evans, and Lewis Clephane, of the District of Columbia, are held firmly bound unto Henry D. Cooke, Alexander R. Shepherd, James A. Magruder, Alfred B. Mullett, and Samuel P. Brown, constituting and composing the Board of Public Works of the District of Columbia, in the sum of forty thousand dollars, lawful money of the United States of America, to be paid to said Henry D. Cook, Alexander R. Shepherd, Alfred B. Mullett, Samuel P. Brown, and James A. Magruder, constituting and composing the Board of Public Works, of the District of Columbia, or to the certain attorney, successor, or assigns thereof; for which payment, well and truly made, we and each of us do bind ourselves and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this 12th day of September, A. D. one thousand eight hundred and seventy-two.

Whereas the above-bounden John O. Evans, by an instrument in writing, under his hand and seal; bearing even date with these presents, has contracted with Henry D. Cooke, Alexander R. Shepherd, James A. Magruder, Alfred B. Mullett, and Samuel P. Brown, constituting and composing the Board of Public Works of the District of Columbia, to lay and put down the Stow, Miller, or Ballard pavement on the carriage-way * * * on Seventh street, between

B street north and B street south; also to lay and put down the Stow, Miller, or Ballard wooden pavement on the carriage-way of East Capitol street, between First street and Lincoln square, * * * as fully described in foregoing contract, and on the conditions
101 and for the considerations in the aforesaid contract mentioned and contained or referred to therein:

Now, therefore, the condition of the above obligation is such that if the said John O. Evans shall well and truly and in good, sufficient, and workmanlike manner execute the work mentioned in said contract, and complete the same in accordance with the stipulations thereof, and in each and every respect fully comply with the provisions and requirements therein contained, then this obligation to be void; otherwise to remain in full force and virtue.

JOHN O. EVANS. [SEAL.]
D. S. EVANS. [SEAL.]
LEWIS CLEPHANE. [SEAL.]

Witness to L. Clephane's signature—
WM. E. NOTT.

Signed and sealed in presence of—
CHAS. W. KREBS.
WM. E. NOTT.

102 EXHIBIT F. Filed May 9, 1885. R. J. Meigs, clerk.

DISTRICT OF COLUMBIA
vs.
WASHINGTON & GEORGETOWN RAILROAD CO. } At Law. No. 22457.

Form of Certificate.

DISTRICT OF COLUMBIA.

$——. *Board of Public Works.* No. 11803.

Certificate of Indebtedness.

Be it known that the Board of Public Works of the District of Columbia, having assessed upon lot number ——, in square number ——, in the city of Washington, in said District, the sum of —— for its proportionate amount of the costs of improvements upon —— street ——, issue this certificate of indebtedness against said property for said sum, with interest at the rate of ten per centum per annum from the date hereof until paid. Said assessment and this certificate constitute a lien upon said property.

This certificate is issued in accordance with an act of the Congress of the United States, entitled "An act to provide a government for the District of Columbia," approved February 21st, 1871; and an act of the Legislative Assembly of the District of Columbia, entitled "An act prescribing the mode of assessments for special improvements and providing for the collection thereof," approved August 10th, 1871; and also an act of said Legislative Assembly, entitled "An act amendatory of an act entitled 'An act prescribing the mode of assessments and providing for the collection thereof, approved August 10th, 1871,'" approved August 23d, 1871.

Given under our hands, in the city of Washington, D. C., this — day of ——, eighteen hundred and seventy ——.

——— ———,
——— ———,
——— ———,
——— ———,
——— ———,

Board of Public Works, District of Columbia.

Endorsed across the face: B. P. W.

103 In the Supreme Court of the District of Columbia, Holding a General Term.

MONDAY, *June* 15, 1885.

Session resumed pursuant to adjournment.

Present: Justices Cox, James, and Merrick.

DISTRICT OF COLUMBIA
vs.
WASHINGTON & GEORGETOWN R. R. Co. } At Law. No. 22457.

and

DISTRICT OF COLUMBIA
vs.
METROPOLITAN RAILROAD Co. } At Law. No. 22458.

These causes having been consolidated, or rather heard together, and having been argued by counsel and submitted to this court, it is now here considered by this court that the judgment of the special term be, and it is hereby, affirmed with costs, to be taxed by the clerk.

104 Filed June 24, 1885.

In the Supreme Court of the District of Columbia, the 24th day of June, 1885.

THE DISTRICT OF COLUMBIA
vs.
THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY. } No. 22457.

In error.

Know all men by these presents that we, The Washington and Georgetown Railroad Company, principal, and W. W. Corcoran and Leonard Whitney, sureties, are bound unto the above-named District of Columbia in the sum of sixty thousand dollars ($60,000.00), to be paid to the said District of Columbia, its succ-ors and assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 24 day of June, 1885.

Whereas the above-named The Washington and Georgetown Railroad Company has prosecuted — to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named The Washington and Georgetown Railroad Company shall prosecute its said writ of error to effect and answer all damages and costs if it shall fail to make good its plea, then this obligation to be void; otherwise the same shall be and remain in full force and virtue.

THE WASHINGTON & GEORGETOWN R. R. CO.,
By HENRY HURT, *President.* [SEAL.]
W. W. CORCORAN. [SEAL.]
LEONARD WHITNEY. [SEAL.]

Sealed and delivered in presence of—
ARTHUR T. BRICE,
As to Mr. Corcoran.
JAMES H. KING,
As to Leonard Whitney.

The above bond is approved, as a supersedeas bond, the 25th day of June, 1885.

W. S. COX, *J.*

105 Filed June 24, 1885. R. J. Meigs, clerk.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between the District of Columbia, plaintiff, and the Washington and Georgetown Railroad Company, defendant, a manifest error hath happened, to the great damage of the said railroad company as by its complaint appears, and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, therefore you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the United States, this 25th day of June, in the year of our Lord 1885, and of the Independence of the United States the 109th.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *To wit:*

To the District of Columbia:

You are hereby cited and admonished to be and appear at a Supreme Court af the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein the Washington and Georgetown Railroad Company is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness W. S. Cox, justice of the said supreme court of the District of Columbia.

WALTER S. COX.

Due service of the above citation admitted this 25- of June, 1885.

A. G. RIDDLE,
Att'y for Pl'ff, Dist. of Col.

[Endorsed:] Law 22457. The District of Columbia *vs.* The Wash. & Georgetown Railroad Company. Writ of error and citation. Filed Jun- 24, 1885. R. J. Meigs, clerk.

106 CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings and printings attached to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 6th day of November, 1885.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk,*
By L. P. WILLIAMS,
Assistant Clerk.

Endorsed on cover: Dist. of Columbia supreme court. No. 194. The Washington & Georgetown Railroad Company, plaintiff in error, *vs.* The District of Columbia. Filed November 7, 1885.

IN THE

Supreme Court of the United States.

OCTCBER TERM, 1888.

No. 194.

THE WASHINGTON AND GEORGETOWN RAIL-ROAD COMPANY

vs.

THE DISTRICT OF COLUMBIA.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF FOR THE DEFENDANT.

A. G. RIDDLE, *Attorney for District of Columbia.*

JUDD & DETWEILER, PRINTERS.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 194.

THE WASHINGTON AND GEORGETOWN RAILROAD COMPANY

vs.

THE DISTRICT OF COLUMBIA.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF FOR THE DEFENDANT.

A. G. RIDDLE, *Attorney for District of Columbia.*

THE CASE.

Case 24, The Metropolitan Railroad Company *vs.* The District of Columbia, already argued and submitted, involves all the questions under the same issues as are presented in this record. In the presentation of this case I beg to rely upon my brief submitted in that, supplementing so much of it as sustains my demurrer to the railroad company's pleas of the Statute of Limitations; and, if the judg-

ment is reversed on this issue, I hope to be permitted to reply in the court below special matter, which, I trust, will be found sufficient.

The Statute of Limitations is not well plead, because—

FIRST. The suit is upon a statute—two statutes.

The railroad company, a creature of Congress, was authorized to occupy certain streets and was required to pave and keep them in repair. The District, another creature of Congress, was armed with power and means to improve and repair the same streets. A government, and thus armed and provided, it was its duty to improve and care for these streets.

The company neglected to perform its duty, and the District, as all governments are, was compelled to do it for the company—to pave and repair the streets.

The statutes provided no remedy for the District against the company and hence this suit. It is a suit upon the statutes. It may be called in assumpsit, in case, or debt. They are the habiliments—the old clothes of the law. A plea is not to either of them, but to the body, the thing they drape.

The obligation to be enforced is purely statutory. The privity of the parties entirely statutory, with no color of convention. If you call it a contract that is the result of a purely statutory relation of each party to the subject-matter.

It does not do to say that the acceptance of the charter was an implied parol promise to perform its obligations as individuals, as in the case cited by the company from the 92 U. S., and that our suit is on this implied assumpsit. We are not suing the individual stockholders, but the company, the corporation, on its charter; and whatever may be the individual act of each member, when by his acceptance he passes within the charter, his individuality is lost. The many become one; the natural person, with all the rest, are moulded into an artificial person, clothed with and possessed

of corporate powers, and when we compel it to perform its obligations we enforce its own statute against it, and by virtue of our own statutory rights and powers.

The case of *Carrol* vs. *Green*, above referred to, is in no feature identical with this, nor can this case be brought within its governing spirit.

Carrol was a stockholder in the Exchange Bank, which had the individual-liability clause in its charter; the bank failed, and this was a suit to enforce that clause. The South Carolina statute of limitations was plead and sustained. The Court, by Mr. Justice Swayne, held that the suit was not on the statute, which was matter of inducement. The Supreme Court said this, and it must be the law. It broadens our idea of inducement, and carries the distinction between suits at common law and suits on statutes quite to an invisible point.

We may pursue a stockholder outside the statute which created his relation and liability to the thing to be enforced against him and treat that as descriptive, as defining. Does it not follow that when we sue, not a stockholder as an individual, but the corporation, not on its note or bond or on any of its authorized common law undertakings, but to enforce a duty created by its charter itself, our suit, no matter by what name we call it, must be on the statute? The statute is not mere inducement then.

In the stockholder case cited, the charter was but one of many equally important things to be set forth—the provisions of the charter, organization of the bank, creation of the debt, failure and bankruptcy of the bank, and stockholdership of the party to be charged; and the charter might well fall in as part of the preamble, like the allegation of the office in a suit for rescue or eloigning goods, and, of course, traversable.

The conditions of the case show that after the cause of action accrued against the stockholders—the failure of the bank—they were not pursued till the statute became a de-

fense, which even the debtor bank could have made, and the court would have been almost remiss if it did not find a way to relieve them.

The company argues that we are not enforcing its charter; we have merely sued to recover money because it did not perform its duty.

Every man who takes upon himself a legal obligation, impliedly by the same instrument undertakes to pay, if he does not perform, and the law is content with either; and when he is compelled to pay he has satisfied the law. We do enforce the charter as one enforces a building contract not performed.

SECOND. THE PARTY SUING BELOW.

a. Assume that a real municipal corporation was pursuing this Company. the District of Columbia, under the act of February 21, 1871, with the broad and ample powers there conferred, and remembering that the question, Can the Statute of Limitation be plead to a corporation created by Congress? is one of first impression in this Court, it is submitted that on broad and general principles the holding must be that such a plea is bad.

b. It is to be kept in mind that by the act of June 20, 1874, the municipality became a statutory fiction—a mere name—in which the officers of the United States are enforcing its claim to moneys belonging exclusively to its revenues.

The District is an integral part of the United States. Its inhabitants are citizens of the United States alone. There are no citizens of the District—can be none. They are under the exclusive government of Congress and the President, with no intervening power. Congress taxes them; the proceeds are a part of the general revenues of the United States and disbursed under appropriation acts of Congress, and the accounts are kept as are all the fiscal transactions of the General Government and by the same officers.

The United States is here in this fictitious name, prosecuting this case for its own benefit, and I submit cannot be barred by this Maryland statute of limitations.

THIRD. THE BURDEN IMPOSED ON THE COMPANY BY ITS CHARTER WHICH WE NOW SEEK TO ENFORCE IS A TAX.

The maintenance of the streets in the two cities, as well as the roads outside, are a public charge mainly.

Quite early much the larger part of the cost was charged upon private property adjoining a given street and enforced as were other taxes. This method of maintaining streets, somewhat modified, remained in vigorous force until the act of June 11, 1878.

The sole tax upon the railroad company for its large privileges was this burden cast upon it of improving and sustaining the portion of the streets occupied by its tracks, as its charter provides—that and a *liability* to a license tax upon its cars.

This burden of contributing to the maintenance of the streets, which might be much or little, is a tax, and is directly within all the recognized definitions of the word.

Unfortunately the charter itself did not provide any means for its enforcement, nor did any other law until the act of June 11, 1878, and that was not retroactive. That provides for charging this cost on the railroad property, and a sale, where the District, as in this case, performed the work. So also the act of July 5, 1870, for paving Pennsylvania avenue had the same provision—unequivocal declarations of the nature of the burden—it was and is a tax, a character never to be lost sight of in dealing with it.

Unfortunately the rulers of the District who performed the labor chargeable to the railroad companies, did not stop to very clearly ascertain the legal relations of the parties to each other, in this thing of a several and yet common duty toward the streets occupied by the company. As shown the company conformed to grade and paved between its tracks.

The District paving only the four exterior feet. The District began by assessing the company as an abutting land-owner, (it then charged a third of the whole cost to the abutting land-owners), and thus the matter stood till the revision under the acts of June 19, 1878, and June 27, 1879.

The matter was then for the first time brought to my attention, when I directed the whole cost for the outside four feet to be withdrawn, revised to the true costs, charged to and demanded of the company.* My predecessors advised the District that it had no claim on the Companies for the money it had thus expended for them severally.

The District always regarded the charter duty to repair as purely a tax, though for a long time no attempt was made to enforce it, for reasons referred to in the note.

I am sure you cannot plead the statute of James in bar of the recovery of a tax, however sought to be enforced.

We were obliged to resort to this suit on these statutes. My declaration leaves them in their naked force. I call my suit by no name. I count on no promise to pay. I use none of the worn and soiled garbs of the law. I bring nothing here but the bare case to enforce a statutory tax under the laws creating the parties.

A. G. RIDDLE,

Attorney, District of Columbia.

---

* The act of June 20, 1874 (18 Statutes, 116) treats the claim of the District for its expenditure for the railroad companies as a debt, and three or four years later the Senate called for a report of it. The House committee (District of Columbia) called the presidents of the companies before it, where they agreed to make up cases of the facts and submit them to the supreme court of the District. In this the statute of limitations was to be waived. Unfortunately the committee relied upon the parole assurances of the railroad companies' officers, and after months of ineffectual effort to secure the statement of facts I commenced the suits, and was met, as I expected to be, with the pleas demurred to. A. G. R.